DOCUMENT RESUME

ED 206 229 HE 014 283

AUTHOR	Williams, Carole A.
TITLE	The Black/White Colleges: Dismantling the Dual System of Higher Education.
INSTITUTION	Commission on Civil Rights, Washington, D.C.
PUB DATE	Apr 81
NOTE	52p.
AVAILABLE FROM	U.S. Commission on Civil Rights, Washington, DC 20425.
EDRS PRICE	MF01/PC03 Plus Postage.
DESCRIPTORS	*Black Colleges; Black Students; *Black Teachers; College Curriculum; *College Desegregation; College Role; Compliance (Legal); Curriculum Development; Educational Opportunities; Equal Education; Evaluation Criteria; *Faculty Integration; Federal Aid; Federal Regulation; Financial Support; Government School Relationship; Higher Education; *Public Policy; *State Colleges
IDENTIFIERS	Adams v Califano; Adams v Richard

ABSTRACT

Criteria to aid states in desegregating their higher education systems and the need for federal desegregation policy to take into account the unique role of public black colleges are examined, and the historical effects of segregation on educational opportunities for black Americans are traced. Criteria issues by the Department of Health, Education and Welfare, "Revised Criteria Specifying the Ingredients of Acceptable Plans to Desegregate State Systems of Public Higher Education," focused on three major areas: the dismantling of the dual system with respect to black and white colleges; the desegregation of student enrollments, particularly at the traditionally white institutions; and the desegregation of faculty, administration staffs, nonacademic personnel, and governing boards. It is recommended that the Department of Education should monitor the implementation of the desegregation plans in Arkansas, Florida, Georgia, Oklahoma, and Virginia, and that Title VI compliance should be determined for the remaining states that formerly maintained de jure dual systems of higher education. It is suggested that the adequacy of the criteria for eliminating the effects of past discrimination and for achieving a unitary system should be reviewed. Additionally, suggestions for strengthening the criteria include the following: black public institutions need to expand missions that include more diverse curricula and new degree programs; current funding to traditionally black institutions should be equal to that granted to white institutions and sufficient funds should be allocated to compensate for past inequities; programming to avoid duplication should emphasize specialized, career-oriented degree programs at black institutions. (SW)

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THE BLACK/WHITE COLLEGES:

Dismantling the Dual System of Higher Education

United States Commission on Civil Rights
Clearinghouse Publication 66

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Acknowledgments

This statement was written by Carole A. Williams. Valuable assistance was provided by Wanda Johnson. Other staff members who participated on the project include: Clinton Black, Jessalyn P. Bullock, and Miguel Escalera. The project was carried out under the supervision of Helen Franzwa Loukas, Division Chief, and the overall supervision of Caroline Davis Gleiter, Assistant Staff Director, Office of Program and Policy Review. The staff is indebted to the entire support staff of the Office of Program and Policy Review.

Staff of the Publications Support Center, Office of Management, were responsible for final preparation for publication.

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1. Introduction

Education traditionally has had a significant place in the American heritage. Gunnar Myrdal in his classic study of American society, *An American Dilemma*, said of the role of education in American democratic thought and life: "Education has always been the great hope for both the individual and society. In the American Creed it has been the main ground upon which 'equality of opportunity for the individual'. . .could be based."[1] Today, higher education has become a necessity for social and economic mobility in our society. No less than for other groups, higher education is particularly important for blacks because it is a crucial vehicle for access to the mainstream of American society.[2]

Public systems of colleges and universities were developed in the latter half of the 19th century as a means of "democratizing" higher education by making it available to the large majority of the American people.[3] In the Southern and Border States,[4] a separate and unequal system of public institutions developed for black Americans. (For a list of traditionally black public institutions of higher education see appendix A.) Under the dual system, the traditionally black public institutions were subjected to decades of fiscal deprivation, discrimination, and underdevelopment. Although these institutions survived against great odds and succeeded in educating generations of black Americans, segregation in public higher education effectively denied equality of educational opportunity to blacks.

Efforts to desegregate State systems of higher education in the Southern and Border States began in the 1930s when blacks sought admission to white graduate and professional schools.[5] In the 1950s blacks in several States challenged the constitutionality of segregation in public elementary and secondary schools.[6] In 1954 the Supreme Court of the United States ruled in *Brown v. Board of Education*[7] that segregation in public education is a denial of the equal protection of the laws.[8] The *Brown* decision was followed by State and local opposition and resistance to desegregation.[9] Consequently, *Brown* had little immediate effect on desegregation in public education at any level.

A decade after the *Brown* decision Congress enacted the Civil Rights Act of 1964, Title VI of

[1] Gunnar Myrdal, *An American Dilemma* (New York: Harper and Bros., 1944), p. 882.

[2] Ibid., p. 883.

[3] U.S., Department of the Interior, Office of Education, *Survey of Land-Grant Colleges and Universities*, by Arthur J. Klein (Washington, D.C.: Government Printing Office, 1930), vol. I, p. 1.

[4] The Southern States are Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia. The Border States are Delaware, Kentucky, Maryland, Missouri, Oklahoma, and West Virginia.

[5] Howard University, Institute for the Study of Educational Policy, *The Lengthening Shadow of Slavery*, by John E. Fleming (Washington, D.C.: Howard University Press, 1976) (hereafter cited as *The Lengthening Shadow of Slavery*), pp. 99–100.

[6] Brown v. Board of Education of Topeka, 98 F. Supp. 797 (D. Kan. 1951); Briggs v. Elliott, 98 F. Supp. 529 (E.D.S.C. 1951); Davis v. County School Board of Prince Edward County, 103 F. Supp. 337 (E.D. Va. 1952); Gebhart v. Belton, 87 A.2d 862 (Del. ch. 1952); and Bolling v. Sharpe, 347 U.S. 497 (1954).

[7] 347 U.S. 483 (1954).

[8] *Id.* at 493.

[9] In Prince Edward County, Virginia, for example, the public schools were closed to prevent desegregation. Griffin v. County School Board of Prince Edward County, Virginia, 377 U.S. 218 (1964). *See also*, Cooper v. Aaron, 358 U.S. 1 (1958); Goss v. Board of Education, 373 U.S. 683 (1963); McNeese v. Board of Education, 377 U.S. 668 (1963); Florida State *ex rel.* Hawkins v. Board of Control, 350 U.S. 413 (1956); Lucy v. Board of Trustees, 213 F.2d 846 (5th Cir. 1954); Lucy v. Adams, 134 Supp. 235 (N.D. Ala. 1955); Lucy v. Adams, 350 U.S. 1 (1955); Adams v. Lucy, 228 F.2d 619 (5th Cir. 1955), *rehearing denied*, Feb. 1, 1956, *cert. denied* 351 U.S. 931 (1956).

which required nondiscrimination in programs receiving Federal financial assistance.[10] The Department of Health, Education, and Welfare failed to enforce Title VI in States operating dual systems of higher education, and consequently, little desegregation progress occurred since the States took no affirmative steps of their own.[11]

The most recent effort to desegregate State systems of higher education resulted from a series of cases brought to compel the Department of Health, Education, and Welfare (HEW)[12] to comply with the provisions of the Civil Rights Act of 1964 governing federally funded programs in relation to school desegregation.[13] In *Adams v. Califano,* the U.S. District Court for the District of Columbia found HEW's efforts to desegregate State systems of higher education to be inadequate.[14] The court held that HEW's continued granting of Federal funds to public higher education systems which had not achieved desegregation or submitted adequate desegregation plans violated Title VI of the Civil Rights Act of 1964.[15] The court ordered HEW to develop specific desegregation criteria and to require six noncomplying States[16] to submit desegregation plans in accordance with the criteria.[17]

Accordingly, HEW issued "Revised Criteria Specifying the Ingredients of Acceptable Plans to Desegregate State Systems of Public Higher Education,"[18] which focus on three major areas: (1) the dismantling of the dual system with respect to black and white colleges; (2) the desegregation of student enrollments, particularly at the traditionally white institutions; and (3) the desegregation of faculty, administrative staffs, nonacademic personnel, and governing boards.[19]

More than 25 years have elapsed since the historic *Brown* decision, yet inequities in State systems of higher education continue. In view of its concern about the continuing inequities, the Commission has undertaken an examination of the potentiality of the criteria to aid States in desegregating their higher education systems.[20] This statement contains the results of that examination. The Commission's purpose in presenting this statement is threefold: (1) to clarify the purpose of higher education desegregation and the need for the Department of Education to enforce vigorously the criteria; (2) to show how strengthened criteria would help States in achieving effective unitary systems of higher education; and (3) to stress the need for Federal desegregation policy to take into account the unique and important role that the Nation's public black colleges have played—and should continue to play—in higher education.

Because the problems confronting higher education desegregation in the 1980s are a consequence of the inherent inequities perpetuated by the dual system,[21] the statement begins with an overview of the historical effects of segregation on educational opportunities for black Americans.

[10] 42 U.S.C. §2000d–§2000d–6 (1976 and Supp. II 1978).

[11] Adams v. Richardson, 356 F. Supp. 92, 94 (D.D.C. 1973).

[12] Responsibility for the majority of the Federal educational programs and activities previously lodged in the Department of Health, Education, and Welfare was transferred to the Department of Education on May 5, 1980. The new agency was created by law on Oct. 17, 1979. 20 U.S.C.A. §3441 (Supp. 1980).

[13] Adams v. Richardson, 356 F. Supp. 92 (D.D.C. 1973), *modified and aff'd.*, 480 F.2d 1159 (D.C. Cir. 1973), *supplemental order sub. nom.*, Adams v. Weinberger, 391 F. Supp. 269 (D.D.C. 1975), *second supplemental order sub. nom.*, Adams v. Califano, 430 F. Supp. 118 (D.D.C. 1977). The defendant in each of the *Adams* suits was the incumbent Secretary of the Department of Health, Education, and Welfare. The term "*Adams*" will be used to refer collectively to the four decisions.

[14] 430 F. Supp. 118, 119–20 (D.D.C. 1977).

[15] *Id.* at 120.

[16] Arkansas, Florida, Georgia, Oklahoma, North Carolina, and Virginia. Although the court in Adams v. Califano, 430 F. Supp. 118 (D.D.C. 1977), ordered HEW to develop criteria to help these six States implement desegregation, HEW noted in the criteria that:

> These criteria will be applied to a State which formerly operated a dual system of public higher education under State law, if the Office for Civil Rights determines after investigation that the State has failed to remove the vestiges of racial segregation in its system in violation of Title VI.

43 Fed. Reg. 6659 (Feb. 15, 1978).

[17] Adams v. Califano, 430 F. Supp. 118 (D.D.C. 1977).

[18] 43 Fed. Reg. 6658.

[19] *Id.*

[20] The Commission recognizes that efforts to desegregate colleges and universities differ from those required for desegregating elementary and secondary schools. These differences are that higher education is neither free nor compulsory. Students are free to select the college that is best suited to their needs and goals. (*See generally,* Charles H. Holmes, "The Affirmative Duty to Desegregate State Systems of Higher Education Without Eliminating Racially Identifiable Schools," *North Carolina Law Journal,* vol. 5, pp. 365, 367–70 (1974). Moreover, as the court noted in *Adams,* desegregation in higher education must be dealt with on a Statewide rather than a school-by-school basis. (480 F.2d 1159, 1164–65 (D.C. Cir. 1973.)

[21] Thomas Jesse Jones, ed., *Negro Education: A Study of Private and Higher Schools for Colored People in the United States,* bulletin, vol. I, no. 38 (1916; reprinted New York: Arno Press and The New York Times, 1969); *The Lengthening Shadow of Slavery,* pp. 70–71.

2. The Dual System of Higher Education

The first public higher education institutions for blacks were normal schools[1] founded after the Civil War to train black teachers for the newly emerging segregated public school systems in the Southern and Border States.[2] Missouri established the first black public teacher training institution in 1870. Subsequently, public teacher training institutions were established by the States of Alabama and Arkansas in 1873, North Carolina in 1877, Texas and Louisiana in 1879, Virginia in 1882, and Florida in 1887.[3] Except for training as teachers, opportunities for blacks to receive higher education were limited during this early period.[4]

A second impetus for providing public higher education opportunities for blacks was the land-grant program.[5] The first Morrill Act of 1862 provided for the establishment of a college in each State emphasizing agricultural and mechanical arts, as well as instruction in classical, scientific, and military subjects.[6] Although the first Morrill Act did not contain specific provisions for the education of blacks, four States—Mississippi, Virginia, South Carolina, and Kentucky—did set aside a part of the original land-grant endowment for the support of black land-grant colleges.[7]

In 1890 Congress passed the second Morrill Act that provided additional financial support for land-grant colleges[8] and specifically prohibited discrimination against blacks. The act provided, however,

[1] According to the Carnegie Commission on Higher Education: "Most State colleges and universities have emerged from the normal school tradition, which was a device for preparing teachers for a rapidly expanding public education system. The original normal school was not a college, it enrolled elementary school graduates, provided them some professional work in pedagogy, and then returned them as teachers to the elementary schools of the State. As public high schools expanded, normal schools expanded their programs in arts and sciences to provide future high school teachers the substantive knowledge they needed." Lewis B. Mayhew, *The Carnegie Commission on Higher Education* (San Francisco: Jossey-Bass Co., 1977), p. 173.

[2] During Reconstruction—1867-76—seven Southern States adopted constitutions without provision for segregation in schools. Louisiana and South Carolina adopted State constitutions that required integrated schools. A Mississippi statute made integrated schools optional. With the end of Reconstruction came the restoration of the southern white supremacist government and a quick end to integration. Thereafter, segregation became the accepted way of life in the South. U.S., Commission on Civil Rights, *Report of the United States Commission on Civil Rights* (1959), p. 149; La. Const. arts. 135, 136 (1868); S.C. Const. art. 10 §10 (1868); E. Franklin Frazier, *The Negro in the United States* (New York: MacMillan Co., 1957), pp. 148-59.

[3] Ala. Acts 1873, p. 176; Ark. Laws 1873, No. 97, p. 23; N.C. Laws 1876-77, ch. 234, §§1, 2; La. Const. 1879, art. 231; Texas Laws 1879, ch. 159, p. 181; Va. Laws 1881-82, ch. 266, p. 283; Fla. Laws 1887, ch. 3692, §4, p. 37.

[4] U.S., Commission on Civil Rights, *Equal Protection of the Laws in Public Higher Education* (1960), pp. 2-5, 9 (hereafter cited as *Equal Protection*).

[5] 7 U.S.C. §301 (1976); and U.S., Department of the Interior, Office of Education, *Survey of Land-Grant Colleges and Universities*, by Arthur J. Klein (Washington, D.C.: Government Printing Office, 1930), vol. II, pp. 837-46 (hereafter cited as *Survey of Land-Grant Colleges*, vol. II).

[6] 7 U.S.C. §301 (1976). Under the provisions of the first Morrill Act of 1862, States having public lands (in an amount equal to 30,000 acres for each Member of Congress as entitled by the 1860 census) were given title to such land. The law provided for the sale of whatever land that was not used as a college site, the proceeds to be used as a permanent endowment for one or more colleges. A State without public lands was issued land scrip (provisional documents certifying that the holder is entitled to shares of land) for the amount in acres it lacked, which was to be sold and the proceeds applied to the endowment, support, and maintenance of at least one college. *Survey of Land-Grant Colleges*, vol. II, p. 8. Morrill Act of July 12, 1862, ch. 130, 12 Stat. 503.

[7] *Survey of Land-Grant Colleges*, vol. II, p. 838. In 1871 Mississippi established Alcorn Agricultural and Mechanical College, the first black land-grant college, which received three-fifths of the land-grant endowment. In 1872 Virginia gave one-half of its endowment to Hampton Normal and Agricultural Institute, a private school. The funds later were transferred to what is now Virginia State University. The South Carolina Reconstruction Legislature, under the control of blacks, in 1872 gave all of the endowment income to Claflin University, a private black college. In 1879 the Claflin share was reduced to one-half and in 1896 a State-controlled, black land-grant college (now South Carolina State College) was established to receive the endowment. In 1897 Kentucky assigned one-twelfth of the endowment income to the Kentucky State Industrial School. *Survey of Land-Grant Colleges*, vol. 2, pp. 838-39.

[8] 7 U.S.C. §323 (1976).

that separate colleges for blacks would constitute compliance with the antidiscrimination provisions.[9]

By 1900 all of the Southern and Border States and the Territory of Oklahoma had separate land-grant colleges for blacks.[10] The land-grant college program, one of the most significant in American educational history, "provided the momentum for the development of colleges with a new sense of direction to the needs of a dominant force in American society at the time—rural America."[11] The Morrill Act of 1890 is of particular significance to black higher education because it provided Federal sanction for the establishment of separate colleges for blacks.[12]

The "Separate but Equal" Doctrine

In 1896 the Supreme Court of the United States, in *Plessy v. Ferguson,* [13] gave legal sanction to the doctrine of "separate but equal." Although the case involved transportation, not education, the dictum of the *Plessy* case became the basis for the "separate but equal" doctrine in public education that was to prevail for the next 58 years.[14]

At the time *Plessy* was decided, a pattern of segregation in public higher education in the Southern and Border States had been established by policy, but not by law, as State requirements for racial segregation in elementary and secondary schools did not apply to higher education.[15] Following the *Plessy* decision, the 17 Southern and Border States began to require, by law, segregation in colleges.[16]

The First Challenges to Segregation

During the first half of the 20th century, black colleges, particularly black land-grant colleges, were the principal centers for black public higher education.[17] Although the dual system maintained separate colleges for blacks and whites, educational opportunities for blacks were never comparable to those available to whites.[18] Studies of black colleges examining such tangible factors as facilities and equipment, libraries, types of programs and degrees offered, and the financial support received by these colleges revealed extensive inequalities.[19]

A significant deficiency in the dual system was the failure to provide opportunities for blacks beyond the baccalaureate degree.[20] In the early 1930s none of the public black colleges offered graduate or professional education.[21] As blacks began to seek opportunities for graduate and professional education not offered at the public black colleges, the Southern States enacted legislation providing for the payment of tuition fees for blacks to attend out-of-State or private institutions.[22] By 1948 almost all of

[9] The Morrill Act of 1890 provided that

> No money shall be paid out under this Act to any State or territory for the support and maintenance of a college where a distinction of race or color is made in the admission of students, but the establishment of such colleges separately for white and colored students will be held in compliance with the provisions of this Act if the funds received be equitably divided. . . .

7 U.S.C. §323 (1976).

[10] *Equal Protection,* p. 8. The name, location, and date of establishment of the land-grant colleges for blacks under the first and second Morrill Acts can be found in *Equal Protection,* appendix A, p. 278.

[11] Mayhew, *The Carnegie Commission on Higher Education,* p. 77.

[12] "The Future of Black Colleges," *Daedalus,* vol. 100 (Spring 1971), p. v.; *Equal Protection,* p. 8.

[13] 163 U.S. 537 (1896).

[14] At issue in *Plessy* was the constitutionality of a Louisiana statute that provided for separate accommodations for whites and blacks on railroads in the State. The court found that separation of the races did not necessarily imply inferiority of either race and was a reasonable exercise of the State's police power. *Id.* at 544.

[15] Before 1900 all of the Southern and Border States had explicitly provided for public school systems with separate schools for blacks and whites: Ala. Const. 1875, art. XII, §1; Ark. Acts 1866–67, No. 35, §5, p. 100, and Ark. Acts 1868, No. 52, p. 163; Del. Const. 1897, art. X, §2, and Del. Laws 1898, ch. 67, §22, p. 193; Fla. Laws 1865–66, ch. 1475, p. 37, and Fla. Const. 1885, art. XII, §12; Ga. Laws 1870, No. 53, §32, p. 57; Ky. Laws 1873–74, ch. 521, §16, p. 65, and Ky. Const. 1890, §1870; La. Const. 1898, art. 148; Md. Laws 1865, and Md. Laws, ch. 160, pp. 2–9 (biracial attendance not expressly forbidden); Miss. Laws 1878, ch. 14, §35, p. 103; Mo. Const. 1875, art. XI, §8; N.C. Laws 1868–69, ch. 184, §50, p. 471, and N.C. Const. 1875, art. IX, §2; Okla. Terr. Laws 1897, ch. 34, p. 268, and Okla. Const. 1907, art. XIII, §3; S.C. Const. 1895, art. XI, §7; Tenn. Const. 1870, art. XI, §12, and Tenn. Laws 1869–70, ch. 33, §4, p. 41; Tex. Const. 1876, art. VII, §7, and Tex. Laws 1876, ch. 120, §§53–54, p. 209; Va. Laws 1869–70, ch. 259, §47, and Va. Const. 1902, §140; W. Va. Acts 1866, ch. 74, §26, p. 62; W. Va. Laws 1867, ch. 98, §19, p. 117; and W. Va. Const. 1872, art. XII, §8. None of these statutes requiring segregation of public schools applied to colleges. However, since normal schools and land-grant institutions in these States were being developed for blacks, a general pattern of segregation in higher education was established. *Equal Protection,* p. 9.

[16] *Equal Protection,* p. 13.

[17] *Survey of Land-Grant Colleges,* vol. II, p. 837.

[18] *Equal Protection,* p. 37; Thomas Jesse Jones, ed., *Negro Education: A Study of Private and Higher Schools for Colored People in the United States,* bulletin, vol. I, no. 38 (1916; reprinted New York: Arno Press and the New York Times, 1969), p. 60 (hereafer cited as *A Study of Private and Higher Schools).*

[19] For studies showing the inequalities, see *A Study of the Private and Higher Schools.* This study was originally prepared in 1916 for the U.S. Department of the Interior, Bureau of Education, in cooperation with the Phelps-Stokes Fund, a philanthropic organization set up to aid in the enhancement of black education and the study of black institutions; *Survey of Land-Grant Colleges,* vol. II, pp. 837, 845.

[20] *Equal Protection,* p. 37.

[21] By 1938 seven traditionally black institutions offered graduate instruction. Three were publicly controlled institutions—Virginia State College (1937), Prairie View State College (1938), and federally-supported Howard University (1921). Three were privately controlled institutions—Fisk University (1927), Hampton Institute (1927), and Atlanta University (1929); and one, Xavier University (1933), was a church school. E. Franklin Frazier, *The Negro in the United States* (New York: MacMillan Co., 1957), pp. 473–74.

[22] *Equal Protection,* p. 15.

the Southern and Border States had taken such steps.[23] By furnishing tuition grants to blacks, the States continued to provide "separate but equal" education to blacks without the costly expense of duplicating graduate and professional facilities.[24]

Legal challenges to segregation in higher education began in the early 1930s when the National Association for the Advancement of Colored People (NAACP) began a deliberate attack on segregation with a series of lawsuits to secure black admission to traditionally white graduate and professional schools.[25]

The first significant judicial assessment of the tuition-grant system occurred in 1935 in *Pearson v. Murray,* [26] in which the courts ruled that such grants violated the equal protection clause of the 14th amendment to the U.S. Constitution.[27] Following the *Murray* decision, Texas, Virginia, and Louisiana established graduate schools at their black State colleges.[28] In 1938 West Virginia became the first of the Southern and Border States voluntarily to admit blacks to the graduate and professional schools at West Virginia University.[29]

Blacks continued to file suits seeking admission to white public graduate and professional schools. Between 1938 and 1950, four major cases reached the Supreme Court of the United States. In the first, *Missouri ex rel. Gaines v. Canada,* the Court ruled that out-of-State tuition grants for blacks were unconstitutional and that a State must provide "substantially equal" educational opportunities for all residents of a State.[30] In the 9 years following the *Gaines* decision, separate advanced degree programs were established for blacks in Missouri, North Carolina, Tennessee, Kentucky, Louisiana, and South Carolina.[31]

In *Sipuel v. Board of Regents,* the Court held that Oklahoma had a duty to provide simultaneously the same educational opportunities for blacks as it does for whites.[32] In 1950 the Court delivered two opinions that cracked the foundation of the doctrine of "separate but equal." In *Sweatt v. Painter,* the Court held that requiring the plaintiff to attend a separate law school for blacks which did not have equal facilities was a violation of the equal protection clause of the 14th amendment to the U.S. Constitution and that the plaintiff had a constitutional right to be admitted to the University of Texas Law School.[33] Although the Court did not reexamine the constitutionality of "separate but equal" in *Sweatt,* it broadened the test of equality to include not only such tangible factors as the number and qualifications of teachers, the size of the student body, and the quality of the library and educational facilities, but also such intangibles as the reputation of the faculty, the prestige and tradition of the institution, and the influence and standing of the alumni in the community.[34] In the *Sweatt* decision the Court came close to saying that separate cannot be equal.

In the second opinion delivered by the Court, *McLaurin v. Oklahoma State Regents,* [35] the plaintiff, having successfully sued for admission to the University of Oklahoma Graduate School, was required to sit apart from white students in the classroom and library and to eat at a separate time in the cafeteria.[36] The Court held that once admitted to a white

[23] W. Va. Acts 1927, ch. 10, p. 13; Md. Laws 1933, ch. 234, p. 407; Okla. Laws 1935, ch. 34, p. 138; Ky. Acts 1936, ch. 43, p. 110; Va. Acts 1936, ch. 352, p. 561; Tenn. Acts 1937, ch. 256, p. 1048; N.C. Laws 1939, ch. 65, p. 88; La. Acts 1946, No. 142, p. 412; Texas Special Laws 1939, ch. 8, pp. 310, 359 (appropriation act); Ark. Acts 1943, ch. 345, p. 769; Ala. Acts 1945, No. 64, p. 61; Fla. Laws 1947, ch. 24124, §1; Miss. Laws 1948, ch. 282, p. 306.

[24] *Equal Protection,* pp. 14–15.

[25] Howard University, Institute for the Study of Educational Policy, *The Lengthening Shadow of Slavery,* by John E. Fleming (Washington, D.C.: Howard University Press, 1976), pp. 99–100 (hereafter cited as *The Lengthening Shadow of Slavery).*

[26] 182 A. 590 (Md. 1936). Donald Murray, a black Amherst College graduate and resident of Maryland, was denied admission to the University of Maryland Law School on the basis of race. Maryland had no law school for blacks, but provided tuition grants for black students to attend private or out-of-State institutions. *Id.* at 592–94.

[27] *Id.* at 592–94.

[28] Texas established a graduate department at Prairie View A&M College in 1937. Texas Laws 1937, ch. 444, §5, p. 979. In 1936 a resolution of the Virginia State department of education established graduate courses in education at the Virginia State College for blacks at Ettrick. Louisiana, also by State board resolution, established graduate courses in education for blacks under the general direction of Louisiana State University. Rufus Clement, "Legal Provisions for Graduate and Professional Education of Negroes in States Operating a Separate School System," *Journal of Negro Education,* vol. 8 (1939), pp. 144–47.

[29] Lawrence V. Jordan, "Educational Integration in West Virginia—One Year After," *Journal of Negro Education,* vol. 241 (1955), pp. 371–72.

[30] 305 U.S. 337, 351 (1938).

[31] For example, North Carolina established departments for the study of law, pharmacy, and library science at the North Carolina College for Negroes at Durham in 1939. N.C. Laws 1939, ch. 65, §2, p. 88. In addition, Tennessee (Tenn. Acts. 1941, ch. 43, p. 136), Kentucky (NAACP, *Annual Report* (1941), p. 15; NAACP, *Annual Report* (1942), pp. 15–16), Louisiana (La. Acts. 1946, No. 142, p. 412), and South Carolina (S.C. Acts 1945, No. 223, p. 401; S.C. Acts. 1946, No. 601, p. 1605; S.C. Acts. 1947, p. 622) quickly established graduate or professional programs after blacks filed suits, but before the cases were adjudicated. *Equal Protection,* pp. 21–23.

[32] 332 U.S. 631, 632–33 (1948).

[33] 339 U.S. 629, 635–36 (1950). After denying admission to Herman Sweatt, a black applicant, to the University of Texas Law School, the State opened a separate law school for blacks. Sweatt refused to enroll in the separate school charging that the educational facilities at the black law school were not comparable to those at the University of Texas Law School. *Id.* at 631–32.

[34] *Id.* at 633–34.

[35] 339 U.S. 637 (1950).

[36] *Id.* at 640.

institution, a black student could not be treated differently.[37]

Following the *Sweatt* and the *McLaurin* decisions, State and Federal courts ordered the admission of blacks to the major State universities in Virginia, Missouri, Louisiana, North Carolina, and Tennessee.[38] On the eve of the *Brown* decision, blacks had gained admission to the white graduate and professional institutions in 12 of the 17 Southern and Border States, although, in some instances, only for courses not offered at the States' public black colleges.[39] The other five States—Alabama, Florida, Georgia, Mississippi, and South Carolina—still maintained complete segregation.[40]

Most of the pre-*Brown* litigation concerned admission to graduate and professional programs at State universities because such programs were not available at the black public colleges. Because separate public undergraduate colleges for blacks were available in each of the 17 Southern and Border States, there were fewer efforts to desegregate white undergraduate institutions. Between 1946 and 1954, a few white colleges and junior colleges voluntarily admitted black students, and in other instances, blacks gained admission through the courts.[41]

The test of equality in many of the cases before the courts concerning segregated undergraduate education included such factors as the relative convenience and cost of attending local white colleges as compared with a black college in another part of the State.[42] On these grounds, courts ordered the admission of blacks to undergraduate institutions in Kentucky, Texas, and Louisiana.[43]

The Brown Decision

By 1950 the meaning of "separate but equal" in higher education had evolved to require a State to provide within its borders, simultaneously, the same courses of study; educational facilities of the same size, quality, and variety; colleges of the same prestige; and faculties of the same reputation for both whites and blacks.[44] The definition of "equal" had become defined narrowly so as almost to preclude the equalization of separate facilities.

In those earlier decisions, the Supreme Court of the United States had avoided reexamination of the *Plessy* doctrine and had not ruled on the question of segregated public education below the graduate and professional level.[45] The time was considered ripe for a direct challenge to the constitutionality of "separate but equal."[46] The NAACP Legal Defense and Educational Fund, Inc., initiated five separate class action challenges to segregation in public elementary and secondary schools in Kansas, Virginia, Delaware, South Carolina, and the District of Columbia.[47] Four of these cases were later consolidated under the single name of *Brown v. Board of Education of Topeka.*[48]

On May 17, 1954, the Supreme Court of the United States, in a unanimous decision, ruled that racially segregated public schools deprive black children of the equal protection of the laws guaranteed by the 14th amendment. The Court said:

> Does segregation of children in public schools solely on the basis of race even though the physical facilities and other "tangible" factors may be equal, deprive the children of the

[37] *Id.* at 642.

[38] *See, e.g.*, Wilson v. Board of Supervisors, 92 F. Supp. 986 (E.D. La. 1950), *aff'd.* 340 U.S. 909 (1951); McKissick v. Carmichael, 187 F.2d 949 (4th Cir. 1951), *cert. denied*, 341 U.S. 951 (1951); *Equal Protection*, pp. 34–35.

[39] The 12 States were Maryland, West Virginia, Arkansas, Delaware, Oklahoma, Kentucky, Louisiana, Missouri, Texas, Virginia, North Carolina, and Tennessee. *Equal Protection*, p. 36.

[40] Ibid.

[41] *See, e.g.*, Parker v. University of Delaware, 75 A.2d 225 (Del. 1950); Wilson v. City of Paducah, 100 F. Supp. 116 (W.D. Ky. 1951); Battle v. Wichita Falls Junior College District, 101 F. Supp. 82 (N.D. Tex., 1951), *aff'd.* 204 F.2d 632 (5th Cir. 1953), *cert. denied*, 347 U.S. 974 (1954).

[42] *See, e.g.*, Wilson v. City of Paducah, 100 F. Supp. 116 (W.D. Ky. 1951); Battle v. Wichita Falls Junior College District, 101 F. Supp. 82 (N.D. Tex. 1951), *aff'd.* 204 F.2d 632 (5th Cir. 1953), *cert. denied*, 347 U.S. 974 (1954); Constantine v. Southwestern Louisiana Institute, 120 F. Supp. 417 (W.D. La. 1954).

[43] *Id.*

[44] Stephen L. Wasby, Anthony A. D'Amato, and Rosemary Metrailer, *Desegregation from Brown to Alexander* (Carbondale and Edwardsville: Southern Illinois University Press, 1977), p. 57.

[45] NAACP Legal Defense and Educational Fund, Inc., *25 Years Since Brown* (1979), p. 17. This document is a booklet commemorating the *Brown* decision.

[46] Wasby, D'Amato, and Metrailer, *Desegregation from Brown to Alexander*, pp. 58–59; Richard Kluger, *Simple Justice* (New York: Knopf, 1976), pp. 290–94.

[47] The cases were Brown v. Board of Education of Topeka, 98 F. Supp. 797 (D. Kan. 1951); Briggs v. Elliott, 98 F. Supp. 529 (E.D.S.C. 1951); Davis v. County School Board of Prince Edward County, 103 F. Supp. 337 (E.D. Va. 1952); Gebhart v. Belton, 87 A.2d 862 (Del. ch. 1952); and Bolling v. Sharpe, 347 U.S. 497 (1954).

[48] Known collectively as the *School Segregation Cases*, the four suits, which challenged the constitutionality of segregation in public education based on the equal protection clause of the 14th amendment to the U.S. Constitution, were consolidated under the single name of Brown v. Board of Education of Topeka, 347 U.S. 483 (1954), the first case to reach the Supreme Court of the United States. The fifth suit, Bolling v. Sharpe, 347 U.S. 497 (1954) filed in Washington, D.C., involved the due process clause of the 5th amendment because the District of Columbia was governed by the Congress and the 14th amendment applied only to the States.

minority group of equal educational opportunities? We believe that it does.[49]

The Court concluded that "in the field of public education the doctrine of 'separate but equal' has no place. Separate education facilities are inherently unequal."[50]

The *Brown* decision had little immediate effect; litigation continued to be the chief means for desegregating public colleges and universities.[51] As a result, progress in desegregating State systems of higher education was slow, minimal, and confined largely to the Border States.[52]

The six Border States, voluntarily or by court order, already had taken some steps toward desegregation prior to 1954.[53] Following the *Brown* decision, Maryland, West Virginia, Missouri, Oklahoma, and the District of Columbia took legislative and administrative action to abolish *de jure* segregation in public higher education. In all of the Border States, public white colleges and universities were opened to black students, and white students began to enroll in the traditionally black institutions in Delaware, Maryland, Kentucky, West Virginia, and Missouri.[54]

The States of Arkansas, Virginia, and North Carolina, however, made only "limited and circumscribed" efforts to desegregate their State institutions.[55] By 1959 very few blacks were enrolled in the white public colleges in these States.[56] The University of Arkansas, for example, admitted blacks only for courses not offered at the black public college.[57] The University of Virginia had a similar policy.[58] The University of North Carolina enrolled 0.8 percent blacks in its undergraduate schools.[59]

In Tennessee and Texas, blacks were admitted to white State universities only after protracted litigation.[60] In 1959, 11 State colleges and universities in Texas maintained a policy of complete exclusion of black students.[61] Massive resistance to desegregation occurred in Alabama, Georgia, Florida, Louisiana, Mississippi, and South Carolina.[62] These States used a variety of administrative, legislative, and legal techniques to deny blacks admission to white colleges and universities.[63] Several States also enacted

[49] Brown v. Board of Education, 347 U.S. 483, 493 (1954).

[50] *Id.* at 495.

[51] Because the issue in the *Brown* case was segregation in elementary and secondary schools, the applicability of the decision to higher education was challenged many times in the courts. For example, Tureaud v. Board of Supervisors, 207 F.2d 807 (5th Cir. 1953), *vacated per curiam*, 347 U.S. 971 (1954); Hawkins v. Board of Control, 60 So. 2d 162 (Fla. 1952), *vacated per curiam*, 347 U.S. 971 (1954), 83 So. 2d 20 (Fla. 1955), *vacated per curiam*, 350 U.S. 413 (1956); Frazier v. Board of Trustees, 134 F. Supp. 589 (M.D.N.C. 1955); Atkins v. Mathews, *Race Rel. L. Rep.* 323 (E.D. Tex. 1956); Shipp v. White, Civ. No. 2789, (N.D. Tex., Feb. 11, 1960); Booker v. Tennessee Board of Education, 240 F.2d 689 (6th Cir. 1957), *cert. denied*, 353 U.S. 965 (1957). A second *Brown* decision, Brown v. Board of Education, rendered in 1955, addressed the question of implementing public school desegregation. Commonly known as *Brown II*, this decision set the pace for desegregation, requiring the admission of blacks to public schools "with all deliberate speed," 349 U.S. 294, 301 (1955). Since the phrase "all deliberate speed" was often interpreted as meaning more deliberation and less speed, the pace of desegregation in the public schools was very slow. The argument that it also applied to higher education was used repeatedly to thwart desegregation on that level as well. In Florida *ex rel.* Hawkins v. Board of Control, 350 U.S. 413 (1956), the Supreme Court of the United States ruled that its decision in *Brown II* did not apply to higher education and black applicants were entitled to "prompt" admission. *Id.* at 414.

[52] *Equal Protection*, pp. 51-54.

[53] Ibid. Maryland (1936), West Virginia (1938), Delaware and Oklahoma (1948), Kentucky (1949), and Missouri (1950). The Oklahoma statute (Okla. Acts. 1949, ch. 15, p. 609) provided only for admission at the graduate level and on a segregated basis, while the Kentucky act (Ky. Acts. 1950, ch. 155, p. 615) permitted desegregation at any level of higher education.

[54] The desegregation of black institutions reached major proportions in West Virginia and Missouri. By 1959 West Virginia State College enrolled 60 percent white students; Bluefield State College (West Virginia) enrolled 38 percent white students. It was estimated that Lincoln University in Missouri enrolled 34 to 38 percent white students in 1958. Louis L. Redding, "Desegregation in Higher Education in Delaware," *Journal of Negro Education*, vol. 27 (1958), pp. 253, 256; *Southern School News*, vol. 3, no. 12 (June 1957), p. 7; *Southern School News*, vol. 2, no. 1 (December 1959), p. 1; *Southern School News*, vol. 1, no. 2 (July 1955), p. 10; *Equal Protection*, pp. 50–68; *Southern School News*, vol. 7, no. 2 (October 1954), p. 7; C.H. Parrish, "Desegregation of Higher Education in Kentucky," *Journal of Negro Education*, vol. 27 (1958), pp. 260, 265; *Southern School News*, vol. 7, no. 2 (August 1960), p. 4; Elaine M. Aber, "A Reverse Pattern of Integration," *Journal of Educational Sociology*, vol. 22 (1959), pp. 283–84; *Southern School News*, vol. 6, no. 11 (May 1960), p. 6; *Equal Protection*, p. 56.

[55] *Equal Protection*, p. 56.

[56] Ibid., pp. 56–57. Stephan Stephan, "The Status of Integration and Segregation in Arkansas," *Journal of Negro Education*, vol. 25 (1956), pp. 212, 219.

[57] *Equal Protection*, p. 57.

[58] Ibid.

[59] Ibid., p. 59.

[60] As a result of the Sweatt v. Painter (339 U.S. 629 (1950)) and Gray v. University of Tennessee (342 U.S. 517 (1952)) decisions, the University of Texas and the University of Tennessee admitted blacks to their graduate and professional schools for courses not offered at the black State colleges. After the *Brown* decisions, Tennessee and Texas used legal, legislative, and administrative actions to avoid desegregation. See, for example, Booker v. Tennessee Board of Education, 240 F.2d 689 (6th Cir. 1957), *cert. denied*, 353 U.S. 965 (1955); Whitmore v. Stilwell, 227 F.2d (5th Cir. 1955); Resolution of the State Board of Education of Tennessee, 1 *Race Rel. L. Rep.*, 262-63 (1956); Wichita Falls Junior College Dist. v. Battle, 204 F.2d 632 (5th Cir. 1954), *cert. denied*, 347 U.S. 974 (1954); Allan v. Master, Civ. No. 1481 (E.D. Tex., Jan. 18, 1955); White v. Smith 1 *Race Rel. L. Rep.* 324 (W.D. Tex. 1955).

[61] *Equal Protection*, p. 67.

[62] The term "massive resistance" denotes the use of laws, resolutions, and dilatory tactics by State officials to thwart the implementation of school desegregation. Charles H. Holmes, "The Affirmative Duty to Desegregate State Systems of Higher Education Without Eliminating Racially Identifiable Schools," *North Carolina Central Law Journal*, vol. 5 (Spring 1974), pp. 356, 366, n. 6.

[63] For example, admission tests were introduced; recommendations from alumni or circuit court judges were required; new age restrictions were set; subjective character assessments were made of applicants; or gradua-

laws to stop desegregation.[64] For example, the Mississippi legislature enacted legislation aimed at preserving "racial segregation" in the State's higher education system. To thwart desegregation efforts, the legislature authorized the closing of institutions under the guise of maintaining public peace and tranquility.[65] South Carolina and Georgia enacted measures to deny State appropriations to institutions that did not remain segregated.[66]

The politics of massive resistance were epitomized by the events surrounding the desegregation of the Universities of Mississippi, Alabama, and Georgia. In 1961, after numerous legal and administrative delays and campus riots, the University of Georgia, under Federal court order, admitted two black students.[67]

The enrollment of one black student at the University of Mississippi in 1962 and two black students at the University of Alabama in 1963 required not only a Federal court order but also the intervention of the President of the United States, who federalized the National Guard and sent thousands of Federal troops and marshals to ensure the safety of the black students.[68] In addition to these celebrated examples, court orders were required to desegregate the major public universities in South Carolina, Florida, and Louisiana.[69]

The emphasis of higher education desegregation during this period centered on securing the admission of blacks to traditionally white institutions.[70] Although 72 percent of the white public higher education institutions in the Southern and Border States enrolled a small number of blacks in 1964, 64 percent of those institutions in the Deep South were still totally segregated.[71] The majority of black students in these States continued to attend traditionally black institutions, and the institutions continued to occupy the second class status afforded them under segregation.[72] The *Brown* decision and subsequent court decisions during this period had little effect on improving the educational opportunities of black students or on the conditions of public black colleges.[73]

Title VI of the Civil Rights Act of 1964

Because little progress was achieved in providing blacks with equal educational opportunity, civil rights advocates began to stress the need for stronger Federal action to end discrimination. In response to their call for equality and justice, the U.S. Congress passed the most comprehensive civil rights act since Reconstruction: the Civil Rights Act of 1964.[74] Title VI of the act states:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, or be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.[75]

The Department of Health, Education, and Welfare (HEW) was given responsibility for enforcing Title VI in educational institutions receiving Federal financial assistance.[76]

Between 1964 and 1969, HEW's efforts to implement Title VI were directed at desegregating elementary and secondary schools.[77] Not until 1969–70 did HEW examine 10 of the States that operated dual systems of public higher education—Arkansas, Florida, Georgia, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, Pennsylvania, and Vir-

tion from an accredited institution was made a prerequisite (black colleges in these States were not accredited at the time). See *Equal Protection*, pp. 69–96.

[64] Ibid., pp. 81–90.

[65] Miss. Laws 1958, ch. 311, p. 527.

[66] S.C. Acts 1956, no. 813, p. 1841, 1 *Race Rel. L. Rep.* 731 (1956); *Equal Protection*, pp. 82–84, 89–96.

[67] *Southern School News*, vol. 7, no. 8 (February 1961), pp. 1, 8.

[68] U.S., Commission on Civil Rights, *Twenty Years After Brown* (1977), pp. 19–20; *Southern School News*, vol. 9, no. 5 (November 1962), p. 1.

[69] *See, e.g.*, Combre v. Frazier, Civ. No. 4743 (E.D. La., Dec. 17, 1954); Wells v. Dyson, Civ. No. 4679 (E.D. La., Apr. 2, 1955); Hawkins v. Board of Control, 162 F. Supp. 851 (N.D. Fla. 1958).

[70] For a detailed discussion on the admission of blacks to traditionally white institutions, see *Equal Protection*, pp. 52–96.

[71] Frank Bowles and Frank A. DeCosta, *Between Two Worlds: A Profile of Negro Education* (New York: McGraw-Hill Co., 1971), p. 73.

[72] *Equal Protection*, pp. 97–142. In this report, the U.S. Commission on Civil Rights presented a comparison of the education offered at the white public college with that of the black public college, revealing the magnitude of the black student's deprivation of educational opportunities in higher education.

[73] Ibid., pp. 69–142.

[74] Civil Rights Act of July 2, 1964, P.L. 88–352, Title VI, §601, 78 Stat. 252 (1976 and Supp. II, 1978).

[75] Title VI, Civil Rights Act of 1964, 42 U.S.C. §§2000d (1976).

[76] With respect to dual systems of education, Title VI compliance procedures require that the enforcing agency first seek voluntary compliance from recipients that have not eliminated the vestiges of the dual system. Failure to comply voluntarily could lead to the termination of or refusal to grant Federal financial assistance. As an alternative, those refusing to comply voluntarily may be referred to the Department of Justice. 45 C.F.R. §80.8 (a)(b)(c)(1979).

[77] U.S., Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort—1974*, vol. III, *To Ensure Equal Educational Opportunity* (1975), pp. 127–28; Adams v. Richardson, 356 F. Supp. 92, 94 (D.D.C. 1973).

ginia—to determine whether their educational systems were desegregated.[78] HEW found that these States were continuing to operate segregated dual higher education systems in violation of Title VI, notified them of that conclusion, and advised them of their obligation to submit statewide plans for desegregation.[79] Although five States—Florida, Louisiana, Mississippi, North Carolina, and Oklahoma—failed to submit plans and the other five submitted plans unacceptable to HEW, the Department did not take administrative enforcement action against any of them.[80]

HEW's failure to carry out its Title VI responsibilities in the higher education systems in these 10 States and in hundreds of elementary and secondary school districts led to a series of class action suits seeking to enforce Title VI.[81]

The *Adams* Cases

In *Adams v. Richardson,* the NAACP Legal Defense and Educational Fund, Inc. (LDF) filed, in 1970, a class action suit on behalf of black students, citizens, and taxpayers against the Department of Health, Education, and Welfare and its Office for Civil Rights.[82] The action was brought for declaratory and injunctive relief with respect to the enforcement of Title VI in relation to school desegregation.[83] In deciding the case the district court held that "continuation of HEW financial assistance to the segregrated systems of higher education in the ten States violate[d] the rights of plaintiffs and others similarly situated protected by Title VI of the Civil Rights Act of 1964."[84] The court further held that once HEW determines that a State system of higher education is violative of Title VI, and where efforts to achieve voluntary compliance within a reasonable period are ineffective, HEW has a duty to commence compliance proceedings.[85] The district court ordered HEW to commence enforcement proceedings within 120 days against States that failed to undertake higher education desegregation. Specific and substantial reporting requirements on the part of HEW were ordered.[86]

On appeal, the U.S. Court of Appeals for the District of Columbia Circuit affirmed the district court order, granting a period of 120 days for submission of higher education desegregation plans by the 10 States; but the court of appeals gave an additional 180 days thereafter for negotiation before commencement of compliance proceedings against States not submitting acceptable plans.[87] In doing so, the court of appeals noted that:

> Perhaps the most serious problem in this area is the lack of State-wide planning to provide more and better trained minority group doctors, lawyers, engineers and other professionals. A predicate for minority access to quality post-graduate programs is a viable, coordinated State-wide higher education policy that takes into account the special problems of minority students and Black colleges. . .[T]hese Black institutions currently fulfill a crucial need and will continue to play an important role in Black higher education.[88]

In November 1973 and April 1974 HEW sent individual letters to the 10 States identifying requirements of an acceptable desegregation plan.[89] HEW accepted desegregation plans from 8 of the 10 States in June 1974. Louisiana refused to submit a plan and Mississippi's plan was deemed unacceptable by HEW.[90] Both States were referred to the Department of Justice, which subsequently filed suit.[91]

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[78] Adams v. Richardson, 356 F. Supp. 92, 94 (D.D.C. 1973), *modified and aff'd,* 480 F.2d 1159 (D.C. Cir. 1973), *supplemental order sub. nom.,* Adams v. Weinberger, 391 F. Supp. 269 (D.D.C. 1975), *second supplemental order sub. nom.,* Adams v. Califano, 430 F. Supp. 118 (D.D.C. 1977).

[79] Adams v. Richardson, 356 F. Supp. 92, 94 (D.D.C. 1973).

[80] *Id.*

[81] *Id.*

[82] 356 F. Supp. 92 (D.D.C. 1973). This suit and subsequent suits by Adams were filed against the incumbent Secretaries of the Department of Health, Education, and Welfare.

[83] *Id.* at 93–94.

[84] *Id.* at 94.

[85] *Id.* at 94–95.

[86] *Id.* HEW was ordered to report to the plaintiffs on all steps taken to comply with the present court injunction, including a description of action taken by the Department of Justice on higher education violations referred to it by HEW. Under the provisions, HEW was to make available descriptions of public higher education complaints of racial segregation received by it with explanations of specific reasons for inaction, findings as to absence or presence of racism, and its reasons for not commencing enforcement procedures when racism is present. It is through these reporting requirements that the court and the plaintiffs are able to monitor the Title VI enforcement efforts of HEW (or the Department of Education).

[87] 480 F.2d 1159, 1164–65 (D.D.C. Cir. 1973). The court gave the additional time because, in its view, the problems of higher education desegregation differ widely from those in elementary and secondary schools and because HEW admittedly lacked experience in dealing with higher education desegregation. By consent of the parties, the higher education enforcement deadline was later extended to June 21, 1974. 430 F. Supp. 118, 119 (D.D.C. 1977).

[88] 480 F.2d 1159, 1164–65 (D.C. Cir. 1973).

[89] 430 F. Supp. 118, 119 (D.D.C. 1977).

[90] *Id.*

[91] In 1974 the Department of Health, Education, and Welfare referred both cases to the Department of Justice for initiation of suit. Because private suits were pending involving the same matters, the district courts asked the government to drop its suits and join the private suits. The suits, known as United States v. Louisiana, Civ. No. 74-68 (M.D. La.) and Ayers and United States v. Finch, Civ. No. D.C. 75-9K (N.D. Miss.) are both still

In 1975 the eight States submitted progress reports to HEW covering the first year of desegregation.[93] Finding little evidence of even minimal progress, the plaintiffs in the *Adams* case sought further relief.[93] While the district court was considering the motion, separate actions removed Maryland and Pennsylvania from the suit.[94]

In 1977 the district court in *Adams v. Califano* found that the desegregation plans accepted by HEW in 1974 failed to meet the requirements earlier specified by HEW for acceptable desegregation plans.[95] The evidence revealed that the 1974 desegregation plans had failed to change the segregated and discriminatory patterns that existed when the plans were accepted.[96] The court held that HEW's continued granting of Federal funds to public higher education systems in Arkansas, Florida, Georgia, North Carolina, Oklahoma, and Virginia, which had not achieved desegregation or submitted adequate desegregation plans, violated Title VI of the Civil Rights Act of 1964.[97] The court granted the plaintiffs' motion for further relief and ordered HEW to: (1) notify the remaining six States that their 1974 plans were not adequate to comply with Title VI; (2) devise criteria specifying the ingredients of an acceptable higher education desegregation plan; and (3) require the six States to submit desegregation plans in accordance with the new criteria.[98]

Dismantling the Dual System

The requisites for dismantling the dual system necessarily must focus on remedying the historical inequities perpetuated by segregation. To achieve a unitary system of higher education requires that States take affirmative effective steps to: (1) assure that black students are equitably represented at all levels—undergraduate, graduate, and professional—at the traditionally white institutions; (2) assure that blacks are equitably represented in faculty, administrative, and nonacademic personnel positions at traditionally white institutions and in decisionmaking positions in the State system; and (3) develop the traditionally black institutions so that they can become integral components of the State system, able to attract students of all races on the basis of the quality of their academic programs.

Despite the inequities of segregation and deprivation, black institutions have had an important role in American education. According to the Carnegie Commission on Higher Education:

> The colleges founded for Negroes are a source of pride to blacks who have attended them and a source of hope to black families who want the benefits of higher education for their children. These. . .colleges. . .have been responsible for the higher education of the majority of college-educated Negroes, and during the expansionist 1960s these colleges doubled their enrollments as did the predominantly white institutions. The predominantly Negro institutions have produced the vast majority of black professional workers. They have recruited and educated students from low income families and have developed service programs for their communities. Colleges founded for Negroes have many obstacles to overcome, but they have already

pending. On April 30, 1980, the Federal District Court for the Middle District of Louisiana directed the Department of Justice to submit to Louisiana State officials suggested elements of an acceptable plan and directed the State to respond to the goverment's submission. The Department of Justice's submission, which adopted the HEW criteria, was made on May 15, 1980. Louisiana officials subsequently invited the government to participate in settlement discussions. On June 30, 1980, the court gave both parties until April 7, 1980, to negotiate and report whether or not an agreement could be made. Settlement talks took place in July 1980. Louisiana officials have agreed to consider the matters discussed in the May 15 submission. To expedite matters, the court has set April 6, 1981, as the trial date. The settlement negotiation and trial preparation are proceeding simultaneously. In the event a settlement is not reached by April 1981, both parties will be prepared to go to trial.

In the Mississippi case, with regard to 4-year institutions, the Federal District Court for the Northern District of Mississippi set December 1980 as the deadline for taking discovery. Both parties were scheduled to meet with the court in December 1980, at which time, the court indicated, a trial date would be set. Because each public junior college in Mississippi has a separate governing board, the court in 1976 directed the Department of Justice to negotiate individual settlement agreements with each of the junior colleges. Agreements have been reached with some; negotiations are still underway with others. Nathaniel Douglas, Deputy Chief, General Litigation Section, Civil Rights Division, Department of Justice, telephone interviews, June 8, 1980, and Sept. 3, 1980.

[93] 43 Fed. Reg. 6659 (1978).

[94] 430 F. Supp. 118, 119 (D.D.C. 1977).

[95] Maryland filed a separate suit seeking to enjoin HEW's enforcement proceedings, charging that the Department had failed to engage adequately in efforts to secure voluntary compliance. On August 9, 1977, the court ordered HEW to cease from initiating enforcement proceedings against Maryland and to submit new guidelines for Maryland's desegregation planning. Mandel v. HEW, 562 F.2d 914, 925-26 (4th Cir. 1977). Pennsylvania, because of special unresolved factual issues concerning its desegregation plan, chose to negotiate a settlement with plaintiffs and defendants. 430 F. Supp. 118, 120 (D.D.C. 1977).

As this statement went to press, the Department of Education had notified Richard L. Thornburgh, Governor of Pennsylvania, that the 1974 Pennsylvania desegregation plan negotiated pursuant to Adams v. Richardson, 356 F. Supp. 92 (D.D.C. 1973), had failed to achieve compliance with Title VI of the Civil Rights Act of 1964. The Department requested that Pennsylvania submit a statewide desegregation plan in accordance with the higher education desegregation criteria within 60 days of the notification of noncompliance. Dewey E. Dodds, Regional Director, Office for Civil Rights, Region III, Department of Education, letter to Richard L. Thornburgh, Governor of Pennsylvania, Jan. 16, 1981.

[96] 430 F. Supp. 118, 119 (D.D.C. 1977).

[97] *Id.* at 120.

[98] *Id.*

[99] *Id.* at 120–21.

contributed significantly to the life and progress of black America.[99]

The need for significant improvements in the facilities, funding, and programs at these underdeveloped institutions is critical to achieving a unitary system and to providing equal educational opportunity. Desegregation and the challenge of higher education for future generations necessitate that the traditionally black public institutions become fully viable institutions within the mainstream of American higher education.

[99] Mayhew, "From Isolation to Mainstream: Problems of the Colleges Founded for Negroes," *The Carnegie Commission on Higher Education*, pp. 89–90.

3. The Higher Education Desegregation Criteria

The higher education desegregation criteria developed by HEW in response to the *Adams* court order focus on three major areas: (1) disestablishment of the structure of the dual system; (2) desegregation of student enrollment; and (3) desegregation of faculty and administrative staffs, nonacademic personnel, and governing boards.[1] The criteria, which were ordered by the district court to assist the six *Adams* States in the preparation of their desegregation plans, will apply to all States that operated a dual system of higher education where vestiges of that system still exist.[2]

According to the criteria, specific goals and measures for achieving desegregation are to be undertaken within an initial 5-year period.[3] The preamble to the criteria states that numerical goals and timetables are "established as indices by which to measure progress toward the objective of eliminating the effects of unconstitutional *de jure* racial segregation and of providing equal educational opportunity for all citizens. . . ."[4]

In September 1977 the six *Adams* States submitted desegregation plans. In February 1978, after 4 months of intensive negotiations, HEW provisionally accepted the plans of Arkansas, Florida, and Oklahoma and rejected the plans of Georgia, North Carolina, and Virginia.[5] Negotiations with all six States continued for another year, and by March 1979 HEW had approved plans from all of the States except North Carolina.[6]

In accordance with Title VI and the *Adams* court order, HEW began Title VI administrative enforcement proceedings against North Carolina.[7] The initiation of Title VI enforcement proceedings usually has resulted in the limited deferral of selected Federal funds.[8] North Carolina filed suit in Federal court seeking to enjoin the administrative proceedings, any deferral or termination of Federal funds, and the implementation of the higher education desegregation criteria developed by HEW.[9] The district court denied North Carolina's request to halt the administrative proceedings, but ruled that HEW could neither defer nor terminate Federal funds to the University of North Carolina system until a finding of noncompliance with Title VI had been made following an administrative hearing.[10] The North Carolina administrative proceedings began on July 22, 1980.[11]

A determination of the long term effect of the criteria on establishing a unitary system cannot be

[1] "Revised Criteria Specifying the Ingredients of Acceptable Plans to Desegregate State Systems of Public Higher Education," 43 Fed. Reg. 6658 (1978).

[2] Adams v. Califano, 430 F. Supp. 119, 121 (D.D.C. 1977); 43 Fed. Reg. 6659 (1978).

[3] The criteria focus on initial 5-year goals because higher educational systems are undergoing difficult adjustments caused by fiscal and demographic trends beyond the control of individual States. As each State attains the goals set in its plan, OCR will assess the progress made to determine what additional steps, if any, are necessary to complete the desegregation process. 43 Fed. Reg. 6661 (1978).

[4] *Id.* at 6659.

[5] *Id.* at 6658.

[6] Joseph A. Califano, Jr., Secretary, U.S. Department of Health, Education, and Welfare, statement, Mar. 26, 1979, p. 4 (hereafter cited as Califano Statement).

[7] Ibid., p. 1. These proceedings include notification to States of probable noncompliance and the opportunity for a hearing to determine compliance or noncompliance and, following a determination of noncompliance, termination of Federal financial assistance. 45 C.F.R. 80.8(b)(c) (1978).

[8] Califano Statement, p. 7.

[9] State of North Carolina v. Department of Health, Education, and Welfare, No. 79-217-Civ-5 (E.D.N.C. June 8, 1979).

[10] *Id.* at 6–10.

[11] Jeffrey Champagne, attorney, Office of the General Counsel, Department of Education, telephone interview, July 22, 1980.

made for some time, but the Commission has undertaken an examination of the criteria to assess their potential for achieving equal educational opportunity. Although the criteria are divided into five major sections, the first three address the basic elements of the plans which are to be developed by the States. These criteria (which are *italicized* in the sections below) outline steps to be taken to: (1) disestablish the structure of the dual system; (2) desegregate student enrollment; and (3) desegregate the faculty, administrative staffs, nonacademic personnel, and governing boards.

Disestablishment of the Structure of the Dual System

Disestablishing the structure of the dual system requires States to organize and operate their systems and institutions in a manner that promises realistically to overcome the effects of past discrimination. The Commission believes that many of the criteria related to the disestablishment of the dual system do not require States to take the steps necessary to overcome these effects.

• *Define the mission of each institution within the State system on a basis other than race.*

Under the dual system, traditionally black institutions had limited missions. Academic programs at black institutions were linked closely to the types of jobs that black graduates were permitted to hold in a segregated society.[12] Consequently, teacher training was the primary mission of most black public institutions and continues today to be a major focus at many of these institutions.[13]

Moreover, traditionally black institutions, over the years, have been relegated by State systems to less prestigious roles in the higher education hierarchy.[14] In earlier desegregation efforts, the Office for Civil Rights (OCR of HEW) admonished Virginia officials for including in the mission statements of its traditionally black institutions—Virginia State College and Norfolk State College[15]—that their missions focused "particularly on the remedial and foundation levels for the culturally deprived" and served "large numbers of students from low socioeconomic groups. . .particularly black."[16] OCR said that such statements perpetuated the image of traditionally black institutions as institutions which "offer an education which is less prestigious than that offered by other institutions. . . ."[17]

An examination of institutional classifications shows that in 1976 none of the public black institutions in the Southern and Border States was classified as a "Research" or "Doctorate-granting Institution," while 41 (23.8 percent) of the traditionally white public institutions were in this category.[18] Of the 34 traditionally black public institutions in these States, 20 (59 percent) were classified as "Comprehensive Universities and Colleges I,"[19] compared to 96 (56 percent) of 172 traditionally white public institutions. Thirteen traditionally black institutions (38 percent) were classified as "Comprehensive Universities and Colleges II,"[20] a category that includes a large number of former teachers' colleges that have broadened their programs to include a liberal arts curriculum.[21] Of the public traditionally white institutions, 29 (17 percent) were in this category. The plaintiffs in *Adams* have noted:

> History cannot be omitted from consideration and where it is clear, for example, that black schools would have been graduate centers but for the issue of race, those schools should as a matter of priority be provided with the resources necessary to assume their rightful roles. In particular, many traditionally black schools can and should fulfill public service and research functions which, until now, have been

[12] National Advisory Committee on Black Higher Education and Black Colleges and Universities, *Black Colleges and Universities: An Essential Component of a Diverse System of Higher Education 1979*, p. 36 (hereafter cited as *Black Colleges: An Essential Component*).

[13] Ibid., pp. 32-33; Earl J. McGrath, *The Predominantly Negro Colleges and Universities in Transition* (Columbia University: Institute of Higher Education), pp. 70-71; Carnegie Commission on Higher Education, *From Isolation to Mainstream* (New York: McGraw Hill, 1971), p. 7.

[14] See for example, Howard University, Institute for the Study of Educational Policy, *The 'Lengthening Shadow' of Slavery*, by John E. Fleming (Washington, D.C.: Howard University Press, 1976), pp. 70-71, 88.

[15] Virginia State College and Norfolk State College achieved university status in July 1979.

[16] Peter E. Holmes, Director, Office for Civil Rights, letter to Linwood Holton, Governor of Virginia, Nov. 10, 1973, pp. 7-8.

[17] Ibid.

[18] Doctorate-granting institutions include the leading universities in terms of Federal financial support of academic science and in the number of Ph.D.s (plus M.D.s if a medical school is on the same campus). Carnegie Council on Policy Studies in Higher Education, *A Classification of Institutions of Higher Education 1976*, pp. xv-xvi.

[19] The category "Comprehensive Universities and Colleges I" includes institutions that offered a liberal arts program as well as several other programs, such as engineering and business administration. Many of them offered master's degrees, but all lacked a doctoral program or had an extremely limited doctoral program. All had at least two professional or occupational programs and enrolled at least 2,000 students in 1976. Ibid., p. xv.

[20] The category "Comprehensive Universities and Colleges II" includes colleges that offered a liberal arts program and at least one professional or occupational program, such as teacher training or nursing. Public institutions with less than 1,000 students in 1976 were not included. Ibid., p. xvi.

[21] Ibid.

considered the province only of the white institutions.[22]

The first task set forth in the criterion requiring the disestablishment of the dual system specifies that the mission of each institution shall be defined on a basis other than race. If the effects of historic discrimination are to be overcome, however, black public institutions must have not only nonracial missions, but also expanded missions that include more diverse curricula and new degree programs in line with expanding career opportunities, as well as new public service and research functions. Without new and expanded missions, traditionally black institutions will not be able to assume significant new roles in State systems of higher education.

- *Specify steps to be taken to strengthen the role of traditionally black institutions in the State system.*

The criteria require the States to commit themselves to provide traditionally black institutions with resources that are at least comparable to those at traditionally white institutions having similar missions. This requirement raises a basic question: Will comparable resources provided today compensate for past inequities?

The history of the dual system of higher education shows that the traditionally black institutions have been systematically subjected to discrimination and deprived of the benefits, resources, and development opportunities afforded to the traditionally white institutions.[23] Comparable funding is not sufficient to allow traditionally black institutions to catch up. For example, North Carolina maintains that State support for the traditionally black institutions has been comparable to that for white institutions for "a considerable span of years."[24] HEW, however, has found that North Carolina continues to provide the traditionally black institutions and their predominantly black student bodies with benefits and services that are different from and inferior to those provided to traditionally white institutions and their student bodies.[25] According to HEW:

- Traditionally white institutions have a greater number and variety of degree programs than traditionally black institutions of similar rank;
- Traditionally black institutions have library facilities and acquisitions that are inferior to those at traditionally white institutions of similar rank, a result of the denial of sufficient State funds;
- Failure to provide adequate State funding and other assistance has caused the traditionally black institutions to operate with older and less satisfactory buildings and other physical facilities and with quantitatively and qualitatively less adequate teaching equipment and institutional supplies in comparison with the traditionally white institutions of similar rank.[26]

Long-standing inequities at black and white land-grant institutions cannot be remedied by providing "comparable resources." Decades of unequal funding and limited programs[27] have not allowed black land-grant institutions to develop a competitive research base of first-class facilities, equipment, laboratories, and libraries equal to that of the white land-grant institutions.[28] As a result, black land-grant institutions have not had the opportunity to participate equitably in two important land-grant functions—agricultural research and experiment stations, and cooperative extension programs.[29] For example, agricultural research and experiment stations at white land-grant institutions typically have been responsible for improving agriculture in their respective States through scientific research and have made significant contributions to technological advances in forestry, medicine, fisheries, and environmental research,[30] but black land-grant institutions have been—and for the most part continue to be—locked out of this role. Regarding this program, the Institute for the Study of Educational Policy at Howard University has said:

[22] Plaintiffs' Motion for Further Relief, and Points and Authorities and Support Thereof, appendix IV, p. 19, Adams v. Weinberger, 391 F. Supp. 269 (D.D.C. 1975) (hereafter cited as Adams v. Weinberger, Motion for Further Relief).

[23] Thomas Jesse Jones, ed., *Negro Education: A Study of Private and Higher Schools for Colored People in the United States*, bulletin, vol. I, no. 38 (1916; reprinted New York: Arno Press and The New York Times, 1969) (hereafter cited as *A Study of Private and Higher Schools*); U.S., Commission on Civil Rights, *Equal Protection of the Law in Public Higher Education* (1960) (hereafter cited as *Equal Protection*); and U.S., Department of the Interior, Office of Education, *Survey of Land-Grant Colleges and Universities*, by Arthur J. Klein (Washington, D.C.: Government Printing Office, 1930), vol. II (hereafter cited as *Survey of Land-Grant Colleges*, vol. II).

[24] University of North Carolina, Board of Governors, *The Revised North Carolina State Plan for the Further Elimination of Racial Duality in Public Higher Education Systems, Phase II: 1978–1983*, Aug. 17, 1977, p. 55.

[25] U.S., Department of Health, Education, and Welfare, Administrative Proceeding in the Matter of the State of North Carolina, Notice of Opportunity for a Hearing, at 14 Docket no. 79-VI-11 (Mar. 29, 1979) (hereafter cited as Administrative Proceeding Against North Carolina).

[26] *Id.*

[27] *A Study of Private and Higher Schools*, *Equal Protection*, and *Survey of Land-Grant Colleges*, vol. II.

[28] Howard University, Institute for the Study of Educational Policy, *More Promise than Progress* (Washington, D.C.: Howard University Press, 1978), pp. 82–88 (hereafter cited as *More Promise than Progress*); *Black Colleges: An Essential Component*, p. 51.

[29] Ibid.

[30] Ibid.

> Being effectively eliminated from funds from the larger more important and competitive federal land-grant programs, such as grants for regional research, black land-grant colleges are placed in a double bind. Failure to receive these funds is in and of itself not conducive to stimulating the growth of these institutions, which would make the black land-grant colleges more competitive with large land-grant colleges for the competitive research funds.[31]

The National Advisory Committee on Black Higher Education and Black Colleges and Universities has also noted that mere comparability in funding cannot compensate for past inequities:

> State budget formulas based on current FTE [full-time enrollments] do not take into account past deprivation of the black sector, and do not strive to balance the historical and resource advantages accrued by traditionally white institutions (e.g. endowed chairs, flow of services from equipment, accumulated university foundation resources, etc.).[32]

The Committee further noted that current retrenchment moves in higher education will have a more negative effect on black institutions than white institutions: "Where traditionally white colleges have been privy to the largess of State funds during better times,. . .budgetary restraints in a period where equal treatment of public Black colleges is finding acceptance will serve to further impede their growth."[33]

The criterion requiring at least comparable resources for black institutions will not serve to overcome the effects of past discrimination. The magnitude of the problem requires a solution which will assure not only that current funding to traditionally black institutions is equal to that granted to white institutions, but also that sufficient funds on a "catch-up" basis[34] are allocated to compensate for past inequities.

- *Commit the State to take specific steps to eliminate educationally unnecessary program duplication among traditionally black and traditionally white institutions in the same service area.*

This requirement is designed to offer noncore,[35] key programs at only one institution in an area (the traditionally black institution or the traditionally white institution), thereby enabling each institution to attract black and white students. The elimination of duplication is to be carried out consistent with the objective of strengthening the traditionally black institution. The elimination of program duplication as a means of achieving desegregation can be compared to the magnet school remedy used in elementary and secondary school desegregation. A magnet school offers specialized programs not available in other schools to attract both minority and white students.

Under *de jure* segregation, duplication was synonymous with "separate but equal." According to David Tatel, former director of HEW's Office for Civil Rights:

> Much of [the] duplication was created for the purpose of maintaining racial segregation and our feeling is that unless some of it is diminished, the black. . .high school graduates will continue to go to Black colleges. . .and whites will continue to go to white colleges.[36]

Today at least 14 of the 33 traditionally black public institutions "have direct competition from predominantly white State institutions located in the same cities and towns."[37] These institutions provide a vivid illustration of the duplication that characterizes dual systems. Table 1 shows that these institutions draw students from the same geographic area, yet in 1978 they remained mostly segregated. According to a report of the Race Relations Information Center in Nashville:

> In almost every case, the black school was there first; in [several] instances, the State has created the "white competition" after 1966. In every situation, the schools duplicate some courses and draw funds from the same public treasury. They represent a costly perpetuation of the dual

[31] *More Promise Than Progress*, pp. 86–87.
[32] *Black Colleges: An Essential Component*, p. 53.
[33] Ibid.
[34] The Commission recognizes that because of past deprivation and discrimination experienced by traditionally black institutions, these schools must now be provided with "catch-up" funding (additional investments for laboratory facilities, libraries, and other resources) to allow them to compete with traditionally white institutions for programs and faculty. If they received comparable funding only, they would never be able to compete effectively, because comparable funding would not finance the improvements needed.
[35] The U.S. Office of Education defined core curricula to include biological science, foreign language, mathematics, psychology, fine arts, applied arts, social science, physical education, physical science, and letters. See Arline Pacht, "The Adams Case: An HEW Perspective," *Howard Law Journal*, vol. 22, no. 3 (1979), pp. 427, 429.
[36] David S. Tatel, statement before U.S. Commission on Civil Rights Meeting, Washington, D.C., Jan. 15, 1979, transcript, p. 14 (hereafter cited as Meeting Transcript).
[37] John Egerton, *The Public Black Colleges: Integration and Disintegration* (Nashville, Tenn.: Race Relations Information Center, 1971), p. 6.

system of higher education. . . .The effect [of creating new white public institutions] has been to avoid developing the black schools as integrated institutions on a par with the rest of the system.[38]

An example of a recent effort to "avoid" desegregation by creating a new white institution is found in Tennessee in the case of *Geier v. University of Tennessee*.[39] Tennessee State University (TSU), founded in 1912 for blacks, was the only public college in Nashville until 1947 when the University of Tennessee established a "center" in Nashville (UT-N) to provide part-time evening instruction for white students. In 1968, UT-N, a 2-year extension college that granted no degrees, contemplated expansion to a 4-year, degree-granting institution. Suit was filed in 1968 to enjoin the proposed construction and expansion of UT-N on the grounds that the existence and expansion of UT-N, a predominantly white public university located 5 miles from predominantly black TSU, would perpetuate segregation in the Nashville area.[40]

During the course of the litigation, the U.S. District Court for the Middle District of Tennessee examined the competition for students between the two institutions created by the common programs offered at each: nursing, engineering, undergraduate education, arts and sciences, business administration, and arts and music. The programs had remained predominantly one-race at each school.[41] The court found that the State's desegregation approach—joint, cooperative, and exclusive (unduplicated) program planning—had "not eliminated the competition between UT-N and TSU."[42] In 1977 the court ordered the merger[43] of Tennessee State University and the University of Tennessee-Nashville, with Tennessee State University as the surviving institution.[44]

State higher education officials have been reluctant to address the issue of duplication. North Carolina officials, for example, have charged that HEW is encroaching unlawfully "upon the University's rights of academic freedom. . . ."[45] In its efforts to enjoin use of the criteria, the State charged:

> The Department's assumption of the right to determine what is an "educationally unnecessary program" and its demand that the University eliminate specific "educationally unnecessary program duplication" and withdraw "programs at traditionally white institutions that compete with planned or existing programs at traditionally black institutions" directly contravenes. . .the first amendment.[46]

Some critics of the position taken by North Carolina and other States believe that the States' opposition to eliminating program duplication is motivated by the desire to maintain the status quo. For example, Eldridge McMillan, director of the Southern Education Foundation and member of the University of Georgia Board of Regents, has said:

> The problem with which we are dealing is strictly a non-educational issue. The business of. . .equalizing or enhancing. . .traditionally black institutions is, at best, strictly political. The institutions were born out of that kind of consideration, and the resolve which comes. . .has to be a political resolve. . .it is the unwillingness to tamper with the traditionally white institutions, particularly as it relates to. . .program duplication.[47]

Some black educators also oppose elimination of program duplication, but their opposition stems from the fear that the traditionally black institutions will lose some of their best programs and will

[38] Ibid., pp. 6-7.

[39] Sanders v. Ellington, 288 F. Supp. 937 (M.D. Tenn. 1968); Geier v. Dunn, 337 F. Supp. 573 (M.D. Tenn. 1972); Geier v. Blanton, 427 F. Supp. 644 (M.D. Tenn. 1977), *aff'd sub nom.* Geier v. University of Tennessee, 597 F.2d 1056 (6th Cir. 1979), *cert. denied*, 444 U.S. 886 (1979); Richardson v. Blanton, 597 F.2d 1078 (6th Cir. 1979).

[40] Sanders v. Ellington, 288 F. Supp 937 (M.D. Tenn. 1968).

[41] Geier v. Blanton, 427 F. Supp. 644, 652-53 (M.D. Tenn. 1967).

[42] *Id.* at 656. A "joint program" was defined as one leading to a joint degree in which some course work was done at one institution and some at another, and in which the faculty of both institutions were involved in planning and teaching. A "cooperative program" was defined as programs that made it easier, but did not require students to take work on both campuses, by facilitating student exchange of credits. An "exclusive program" was defined as (1) those exclusively assigned to TSU during the day with UT-N having the opportunity to offer them after 4 p.m. and (2) those programs offered at only one of the institutions. *Id.* at 655.

[43] The merger of a traditionally black institution with a traditionally white institution can be a viable desegregation remedy. The criteria require that States advise OCR in advance of any proposal to merge institutions or campuses. 43 Fed. Reg. 6661 (1978).

[44] Geier v. Blanton, 427 F. Supp. 644 (M.D. Tenn. 1977), *aff'd*, Geier v. University of Tennessee, 597 F.2d 1056 (6th Cir. 1979), *cert. denied*, 444 U.S. 886 (1979); Richardson v. Blanton, 597 F.2d 1078 (6th Cir. 1979), *cert. denied*, 444 U.S. 886 (1979).

[45] Brief in support of plaintiff's application for a temporary restraining order and motion for a preliminary injuction at 16-17, State of North Carolina v. Department of Health, Education, and Welfare, No. 79-217-CIV-5 (E.D.N.C. June 8, 1979).

[46] *Id.* at 18-19.

[47] Eldridge McMillan, director, Southern Education Foundation, Meeting Transcript, pp. 49-50.

Table 1

Racial Enrollment in the Traditionally Black Institutions and Traditionally White Institutions Located in the Same Cities, 1978

	School[1]	Year founded	Total enrollment	Percent black	Percent white
Huntsville, Ala.	Alabama A&M University	1875	3,286	74.6	6.6
	University of Alabama in Huntsville	1950	3,286	5.4	91.8
Montgomery, Ala.	Alabama State University	1874	3,971	98.8	0.2
	Auburn University at Montgomery	1967	2,710	12.5	86.6
Tallahassee, Fla.	Florida A&M University	1887	4,873	90.5	6.4
	Florida State University	1851	15,393	9.8	87.6
Albany, Ga.	Albany State College	1903	1,661	96.6	3.1
	Albany Junior College	1963	1,216	15.1	84.3
Savannah, Ga.	Savannah State College	1890	2,066	88.9	6.5
	Armstrong State College	1935	3,023	11.1	87.5
Grambling/	Grambling State University	1901	3,327	98.0	0.1
Ruston, La.[2]	Louisiana Tech. University	1894	8,104	8.8	87.3
Baton Rouge	Southern University	1880	6,956	95.7	1.4
	Louisiana State University	1855	19,589	4.7	89.2
Baltimore, Md.	Morgan State University	1867	4,059	92.5	3.1
	Coppin State College	1900	2,266	94.1	3.4
	Towson State University	1866	10,469	11.3	86.8
	University of Maryland/ Baltimore County Campus	1963	4,641	19.4	74.8
Greensboro, N.C.	North Carolina A&T State University	1891	4,577	92.8	3.1
	University of North Carolina at Greensboro	1891	6,563	9.8	89.4
Nashville, Tenn.[3]	Tennessee State University	1912	4,071	91.7	3.1
	University of Tennessee at Nashville	1947	3,450	16.6	81.5
Houston, Tx.	Texas Southern University	1947	7,469	76.4	0.9
	University of Houston/ Central Campus	1927	22,734	10.3	76.4
	University of Houston/ Downtown Campus	1974	4,565	26.4	44.7
	University of Houston at Clear Lake City	1971	1,952	5.2	86.8
Norfolk, Va.	Norfolk State University	1935	6,319	97.0	2.0
	Old Dominion University	1930	8,921	6.6	91.2
Petersburg, Va.	Virginia State University	1882	3,735	94.0	4.6
	Richard Bland College of the College of William and Mary	1960	1,121	11.1	85.7

[1] Schools with a majority of blacks enrolled are traditionally black institutions; schools with a majority of white students enrolled are traditionally white institutions. Only the percentage of black and white enrollment is shown. Where other racial and ethnic groups attend a school, the total enrollment does not equal 100% on this table.

[2] Grambling and Ruston, La. are about 5 miles apart.

[3] Tennessee State University and the University of Tennessee-Nashville merged in 1979.

Sources: U.S. Department of Health, Education and Welfare, Office for Civil Rights, *Racial, Ethnic and Sex Enrollment Data from Institutions of Higher Education Fall 1978* (unpublished).

The year that the schools were founded is from U.S. Department of Health, Education and Welfare, National Center for Education Statistics, *Education Directory, Colleges and Universities 1978-79*, pp. 1, 2, 8, 83, 86, 87, 94, 153, 154, 163, 166-168, 304, 306, 385, 389, 405, 408, 418, 420, and 423.

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acquire programs attracting neither black nor white students.[48] There is also concern that eliminating duplication may lead to mergers or closings of traditionally black institutions.[49]

In implementing the desegregation criteria, States were required to assess program duplication in their higher education systems. In Virginia, State officials identified nine programs as "unnecessarily duplicative" at traditionally black Norfolk State College and traditionally white Old Dominion University.[50] Under the Virginia desegregation plan, programs in business education, business management and administration, and early childhood education will be eliminated at Old Dominion and offered only at Norfolk State. In turn, the elementary education program will be offered only at Old Dominion. Other existing programs currently offered at both institutions will be differentiated in function and content.[51] The Georgia desegregation plan calls for the transfer of the Savannah State College education program to Armstrong State College and the Armstrong State College business program to Savannah State College. A class action suit has been filed challenging the transfer of the programs and charging that it will have a detrimental effect on Savannah State, the traditionally black institution, and will perpetuate rather than eliminate the segregated system of higher education.[52] The suit alleges that many white students majoring in business at Armstrong, the traditionally white institution, have transferred to other white public colleges rather than attend Savannah State.[53]

A 1979 study of traditionally black land-grant institutions provides additional support for the concern that black colleges, by reason of their historical underdevelopment, may be the losers on the duplication issue:

> With respect to the duplication of programs in white and Black institutions within the same service region, [a higher education official] argued that State fund limitations required that high demand programs be encouraged *only* at those institutions where the largest number of students would benefit most, i.e., where the best faculty and facilities currently existed.[54]

The criterion requiring the elimination of unnecessary program duplication proposes to address the problem of segregated attendance patterns established by the *de jure* system. The course, however, that many States have taken (and OCR has approved)—that of eliminating education programs at traditionally black institutions and business programs at traditionally white institutions—does not appear, on its face, to offer much promise for remedying the problem, particularly since most, if not all, of the other public and private institutions in each State offer these programs, providing viable options for white students. In 1977–78 in North Carolina, for example, of the 62 public and private senior institutions in the State, all but 4 offered baccalaureate degrees in education and all but 6 offered baccalaureate degrees in business and management.[55] On the other hand, exclusive programming in less traditional disciplines also appears to have had little effect on desegregation. North Carolina A&T State University, a traditionally black institution, was one of six public and private institutions offering baccalaureate degrees in engineering. Despite the "unduplicated" programming, the majority of the graduates from the programs at North Carolina A&T in 1975–76 were black.[56]

The issue seems to center not so much on duplication of programs as on the public perception of the quality and scope of the programs offered at traditionally black institutions compared to those offered at traditionally white institutions. According to a report by the Southern Regional Education Board:

> The image which many whites seem to hold of the black institution is one of inferiority. Whereas the black student who goes to a white school is generally perceived by black compatriots as advancing his or her educational opportunity and attainment, the white student

[48] Herbert O. Reid, professor of law, Howard University Law School, and counsel for NAFEO, presentation at Fourth National Conference of National Association for Equal Opportunity in Higher Education, Washington, D.C., Apr. 26, 1979.

[49] Francesta Farmer, "Selling the Adams Criteria: The Response of OCR to Political Intervention in Adams v. Califano," *Howard Law Journal*, vol. 22, no. 3 (1979), p. 420.

[50] John N. Dalton, Governor of Virginia, letter to David S. Tatel, Director, Office for Civil Rights, HEW, Jan. 6, 1979, attachment A, "Resolution Regarding the Allegedly Duplicative Programs at Norfolk State College and Old Dominion University," pp. 1–2.

[51] Ibid.

[52] Artis v. Board of Regents, CZ 479–251 (S.D. Ga. 1979).

[53] *Id.*

[54] William Elton Trueheart, "The Consequences of Federal and State Resource Allocation and Development Policies for Traditionally Black Land-Grant Institutions, 1862–1954" (unpublished Ph.D. dissertation, Harvard University, 1979), pp. 202–203.

[55] University of North Carolina, Board of Governors, *Long-Range Planning 1978–1983* (1978) p. 464.

[56] Ibid.; U.S. Department of Health, Education, and Welfare, Office for Civil Rights, *Data on Earned Degrees Conferred from Institutions of Higher Education by Race, Ethnicity and Sex, Academic Year 1975–76*, vol. 1, table 6, pp. 258, 533.

attending a black institution is often perceived as compromising his or her educational opportunity or attainment.[57]

Some States have continued to perpetuate the image that traditionally black institutions offer programs of less quality. For example, in its first study on duplication in public institutions, the State of Virginia noted that, although Norfolk State College (traditionally black institution) and Old Dominion University (traditionally white institution) both offered programs titled "Building Construction Technology," "Mechanical Design Technology," and "Industrial Electronic Technology," the programs were "specialized" rather than "duplicative" because:

> In all the programs with "technology" in their titles, there is a significant difference between NSC and ODU programs in terms of educational philosophy, professional registration of graduates, national accreditation and the types of employment that graduates would seek and expect to obtain as well as graduate programs they would apply to and be accepted in.[58]

The study further noted that graduates in the "technology" programs (offered at the traditionally black institution) qualify for "industrial related positions," while graduates of "engineering technology" programs (offered at the traditionally white institution) qualify for engineering design positions and are eligible to be licensed as professional engineers.[59]

Only the programs offered at the traditionally white institution are eligible for national accreditation by the Accreditation Board for Engineering and Technology, and only graduates from these programs are qualified to pursue master's and doctoral degrees in engineering.[60] Such broad differences in programs of the same title add credence to the belief that those at traditionally black institutions are of lower quality.

To be effective, unduplicated programming should emphasize placing specialized, career-oriented, and innovative degree programs at the traditionally black institutions. There is some evidence that traditional attendance patterns can be reversed when black colleges offer such programs. For example, with increasing numbers of students seeking admission to medical and other professional schools without a substantial increase in the number of slots available, white students have begun to seek admission to traditionally black professional schools.[61] In 1978 Howard University's School of Dentistry enrolled 28 percent white students; North Carolina Central University Law School enrolled 42.3 percent white students; Southern University School of Law (Louisiana) enrolled 28.1 percent white students; and Tuskegee Institute's Veterinary Medicine School (Alabama) enrolled 37.6 percent white students.[62]

- *Commit the State to give priority consideration to placing any new undergraduate, graduate, or professional degree programs, courses of study, etc., which may be proposed, at traditionally black institutions, consistent with their missions.*

Historically, the public colleges designated for blacks have not had the comprehensive curricula, the specialized courses (particularly those oriented toward professional occupations), or the graduate and professional programs found at the traditionally white institutions. Under the dual system their missions have been limited and circumscribed. Studies of public black colleges during the pre- *Brown* period found that States provided these institutions with inadequate facilities, equipment, and libraries, as well as types of programs and degrees offered.[63] Before 1957 none of the traditionally black institutions in the 11 Southern States was accredited by the Southern Association of Colleges and Secondary Schools, the regional accrediting agency.[64] Traditionally black public institutions continue to have

[57] Southern Regional Education Board, *Educational Factors Relating to Federal Criteria for Desegregation of Public Post-Secondary Education* (1980), p. 31 (hereafter cited as *Educational Factors Relating to the Criteria*).

[58] "Summary of the Tidewater Duplication Study," Sept. 21, 1978, p. 3. The study was part of Virginia's higher education desegregation plan submitted to the Office for Civil Rights.

[59] Ibid.

[60] Ibid. The Accreditation Board for Engineering and Technology was formerly called the Engineering Joint Council on Professional Development. The organization, located in New York City, changed its name in January 1980.

[61] In 1978 there were 36,636 applicants to American medical colleges; 16,527 were accepted. *Journal of Medical Education*, vol. 243, no. 9 (Mar. 7, 1980), p. 852.

[62] U.S., Department of Health, Education, and Welfare, Office for Civil Rights, "Targeting Analyses in Institutions of Higher Education Based on Excess Minority Attrition in Undergraduate Institutions and the Underrepresentation of Minorities and Females in Professional Schools," July 1979, table 3.

[63] *Survey of Land-Grant Colleges and Universities*, vol. II, pp. 837-46; *A Study of Private and Higher Schools*.

[64] Beginning in the early 1930s the association voted to rate black colleges, granting them approval if they met the association's standards. There were two classifications of ratings—"A" indicated that the standards used for membership were fully met, and "B" that one or more standards were not fully met, but the general quality of the work of the college justified admission of its graduates to any academic or professional work requiring an approved bachelor's degree. *Equal Protection*, pp. 101-02.

fewer and less varied degree programs than traditionally white institutions.[65]

The desegregation criterion requirement that States give "priority consideration" to placing new programs at the traditionally black institutions relies solely on the "good faith" of State systems to do so.[66] "Good faith" seldom has had positive results in desegregation of public education.[67]

An example of the efficacy of this "good faith" requirement at the higher education level is North Carolina's failure to place a new veterinary medicine school at a traditionally black institution. In 1974 the University of North Carolina Board of Governors added a school of veterinary medicine to North Carolina State University.[68] In a "good faith" effort to comply with commitments made in North Carolina's 1974 desegregation plan, the State considered placing the new program at a traditionally black institution—North Carolina A&T State University.[69] After a comparative evaluation of the physical and academic facilities at the two institutions, however, the State decided in favor of the white institution because, in its view, the black institution lacked the necessary facilities and resources for a quality school of veterinary medicine.[70] In a letter to the Governor of North Carolina, HEW noted:

> The decision by the Board of Governors, to place the School of Veterinary Medicine at North Carolina State, is a direct violation of the State's important commitment to encourage desegregation of the State's racially identifiable institutions in every way feasible. . . .The board considered in its decision factors relating to the current strength of the institution [North Carolina A&T] which did nothing more than continue the existence of the present effects of past discrimination. . . .[The] decision to place the veterinary school at North Carolina State not only had the effect of perpetuating the existing dual system but also of further increasing existing inequities.[71]

The North Carolina example also illustrates that the requirement that States give "priority consideration" to placing new and high demand programs at black institutions will have few results if the effects of past inequities, which have left the black institutions at a distinct disadvantage, are allowed to govern State decisions on where quality programs will be located.

In all of the criteria designed to strengthen and enhance the traditionally black institutions, an affirmative effort is needed if historical inequities are to be overcome and a unitary system is to be achieved. States must be required to develop long-range plans to realign important undergraduate, graduate, and professional programs and land-grant and research functions in order to strengthen and enhance traditionally black institutions.

Enhancement of the traditionally black institutions is particularly important if these institutions are to remain viable alternatives for students. Declining student enrollments, expected to continue until the end of the decade, will increase the competition for students at all institutions.[72] The Southern Regional Education Board reports that:

> The combination of the shrinking pool of college-aged students and the efforts of the white institutions to meet their goals will throw the black colleges and white ones into direct conflict for the black students. Since there are more white schools than black ones competing for the same students, and since these white institutions generally have better financed and more effective recruiting organizations, it is predictable that the black students will be attracted in disproportionate numbers to the white schools. If this result occurs, then the black schools will lose their historic enrollment base without gaining compensating increases in white students.[73]

If traditionally black institutions are to survive, they need strong new curricula and degree programs,

[65] *Black Colleges: An Essential Component*, pp. 32-36.

[66] 43 Fed. Reg. 6661 (1978).

[67] *Brown II* called for "good faith compliance" in carrying out desegregation of public education. What followed was a slow and resistant pace of compliance until the late 1960s when the courts ruled that school districts were required to take immediate steps for effective desegregation. The lesson learned from the elementary and secondary school experience was that reliance on "good faith" alone will not achieve desegregation. Brown v. Board of Education of Topeka, 349 U.S. 294, 300 (1955); U.S. v. Jefferson County Board of Education, 372 F. 2d 836 (5th Cir. 1966); Green v. County School Board, 391 U.S. 430 (1968); Alexander v. Holmes County Board of Education, 396 U.S. 19 (1969).

[68] Atkins v. Scott, 597 F.2d. 872, 873 (4th Cir. 1979).

[69] *Id.* at 875-76.

[70] *Id.*

[71] Martin Gerry, Acting Director, Office for Civil Rights, HEW, letter to James E. Holshouser, Governor, State of North Carolina, July 31, 1975, p. 3.

[72] Total enrollment in educational institutions is expected to continue dropping below the 1975 peak-year level through the middle of the 1980s. Although enrollment is expected to climb again in 1986, by the end of the decade, it still will not reach 1978 levels. U.S., Department of Health, Education, and Welfare, National Center for Education Statistics, *The Condition of Education* (1980), p. 17.

[73] *Educational Factors Relating to the Criteria*, p. 30.

particularly in disciplines that will be in high demand for the 1980s.

Desegregation of Student Enrollment

The criteria require that an "acceptable desegregation plan commit the State to the goal of assuring that the system as a whole and each institution within the system provide an equal educational opportunity, are open and accessible to all students, and operate without regard to race and on a desegregated basis."[74] The criteria then require the States to adopt specific goals related to increasing black enrollment and graduation rates within the system as a whole, increasing the enrollment of blacks in traditionally white 4-year institutions, and increasing the enrollment of whites in traditionally black institutions. The specific goals and methods suggested to reach them contain loopholes, however, that are likely to detract from the overall objective of a desegregated system that offers quality education for all.

- *Adopt the goal that for 2-year and 4-year undergraduate public higher education institutions in the State system, taken as a whole, the proportion of black high school graduates throughout the State who enter such institutions shall be at least equal to the proportion of white high school graduates throughout the State who enter such institutions.*

In the six *Adams* States, the proportion of blacks enrolled at the undergraduate level in the systems as a whole nearly approximates black representation in the population. For example, in Florida blacks constitute 15 percent of the total undergraduate enrollment in the public higher education system and 14.2 percent of the State population.[75] This was true of the other States with the exception of Georgia, where, in 1977, 26.1 percent of the population was black, compared to 18 percent of the undergraduate enrollment in the system (see table 2). Examination of black enrollment in 2-year versus 4-year institutions, however, shows that 2-year institutions enroll a higher proportion of blacks than 4-year institutions. In Oklahoma, for example, 11 percent of the 2-year enrollment was black, compared to 6 percent of the 4-year enrollment (see table 2). In four of the six States—Florida, Georgia, North Carolina, and Virginia—the majority of the blacks in 4-year institutions were enrolled in traditionally black institutions (see figure 1).

Black access to 4-year institutions often is governed by high school completion rates and academic preparation at the high school level. In 1977, 70 percent of blacks in the United States between the ages of 18 and 34 had graduated from high school, compared to 84 percent of whites.[76] Blacks frequently receive inadequate counseling and poor secondary school preparation.[77] Many are tracked into nonacademic programs at the high school level and fail to obtain the preparation necessary for admission to 4-year institutions.[78]

To help ensure equal opportunity, the criteria should set separate goals for 2-year and 4-year undergraduate institutions and include measures to ensure that blacks are not channeled disproportionately into 2-year institutions so the State can meet desegregation goals. Additionally, the criteria should contain provisions for increasing the pool of black high school graduates with the required credentials for entering 4-year institutions.

- *Definitions: "Student" means any person enrolled in an instructional program, whether full-time or part-time, subject to exceptions to be specified by the Office for Civil Rights.*[79]

For evaluating progress toward equal opportunity, a distinction must be made between full-time students, part-time students, and nondegree-status students. Aggregating these groups together can create false impressions of desegregation progress and can distort retention data. Separate goals are needed for each student category to safeguard against the disproportionate enrollment of blacks as part-time or nondegree students.

- *Adopt the goal that there shall be an annual increase, to be specified by each State system, in the proportion of black students in the traditionally white 4-year undergraduate public higher education institutions in the State system taken as a whole and in each such institution; and*

[74] 43 Fed. Reg. at 6662.

[75] In conjunction with its responsibilities for monitoring the statewide higher education desegregation plans, the Office for Civil Rights annually collects data on students and faculty in the *Adams* States' higher education systems. The Commission has analyzed the 1977 data submitted by each State, which were the most recent data available that have been verified. Data used throughout this report are from the *Third Annual Report on Progress in Implementing State Wide Higher Education Desegregation Plans* (OCR 3000 Survey) (1977) (hereafter cited as OCR 3000 Survey).

[76] U.S., Department of Health, Education, and Welfare, National Center for Education Statistics, *The Condition of Education* (1979), p. 114 (hereafter cited as *The Condition of Education* (1979)).

[77] National Advisory Committee on Black Higher Education, and Black Colleges and Universities, *Access of Black Americans to Higher Education: How Open is the Door?* (Washington, D.C.: U.S. Government Printing Office, January 1979), pp. xii-xiii (hereafter cited as *How Open is the Door?*).

[78] Ibid.

[79] 43 Fed. Reg. 6663 (1978).

Table 2

A Comparison of Population and Full-Time Black Enrollment at All Levels in Public Institutions in the Six *Adams* States, Fall 1977

	Percent black in population [1]	Total undergraduate enrollment		Total enrollment 2-Year institutions		Total enrollment 4-Year institutions	
		Number	Percent black	Number	Percent black	Number	Percent black
Arkansas	16.9	39,767	18.0	5,419	20.0	34,349	17.0
Florida	14.2	146,018	15.0	80,015	17.0	66,003 [2]	12.0
Georgia	26.1	73,945	18.0	14,115	15.0	59,830	18.0
Oklahoma	7.0	76,496	8.0	21,374	11.0	55,122	6.0
North Carolina	21.9	124,115	23.0	47,808	26.0	76,307	21.0
Virginia	18.7	99,154	16.0	21,138	20.0	78,016	15.0

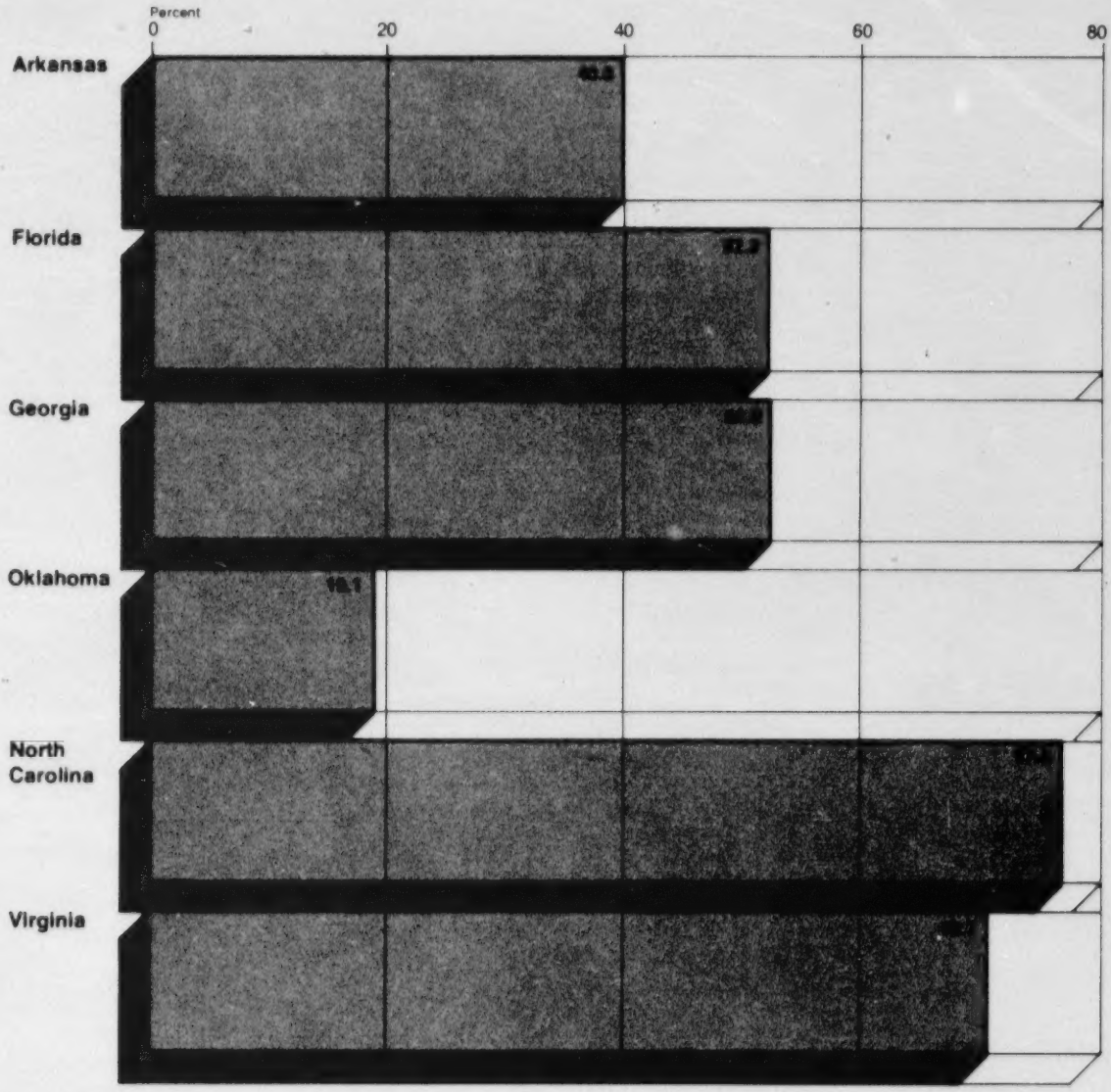
[1] 1975 estimate

[2] Includes Florida's 2-year upper division institutions

Source: U. S. Department of Health, Education, and Welfare, Office for Civil Rights, *Third Annual Report on Progress in Implementing State-wide Higher Education Desegregation Plans* (OCR 3000 Survey, 1977).

Figure 1

Percentage of Total Black Enrollment [1] Attending Traditionally Black Institutions in the Six *Adams* States, Fall 1977



[1] Four-year institutions only.

This can be interpreted as follows: in Arkansas, of the total number of blacks enrolled in 4-year institutions in 1977, 40 percent were in traditionally black institutions.

Source: U. S. Department of Health, Education, and Welfare, Office for Civil Rights, *Third Annual Report on Progress in Implementing State-wide Higher Education Desegregation Plans* (OCR 3000 Survey, 1977).

• *Adopt the objective of reducing the disparity between the proportion of black high school graduates and the proportion of white high school graduates entering traditionally white 4-year and upper division undergraduate public higher education institutions in the State system; and adopt the goal of reducing the disparity by at least 50 percent by the final academic year of the plan. However, this shall not require any State to increase by that date black student admissions by more than 150 percent above the admissions for the academic year preceding the year in which the plan is requested by HEW.*

Since the *Brown* decision in 1954, the *Adams* States, as well as other States that continue to operate dual systems,' have taken few affirmative remedial steps to increase substantially black enrollment in traditionally white institutions. In 1977 blacks were considerably underrepresented in traditionally white institutions in all of the *Adams* States (see figure 2). In North Carolina, where 21.9 percent of the State population was black, 6 percent of the enrollment in traditionally white institutions was black; in Virginia, 18.7 percent of the State population was black, and the black enrollment in traditionally white institutions was 5 percent.

The desegregation criteria set the modest goal of reducing the disparity between black and white entrance rates at traditionally white institutions by at least 50 percent in a 5-year period. At the same time, States that are the most segregated are required to do less than others. The criteria do not require States to increase black student admissions by more than 150 percent above the admissions for the academic year preceding the year in which the plan is requested. Thus, if it is determined that a proportionate entry rate for black students is 3,000 for each of two States, and one State currently has an entry rate of 1,000 black students and the other 500, the goal for the final year of the plan for the State with 1,000 students will be to have a black student admission rate of 2,000, while the goal for the State with 500 black students will be to have a black student admission rate of 1,250.[80]

The goals for reducing the disparity between black and white admissions appear to apply only to the system as a whole and not to individual institutions. Black students tend to be least represented in the major universities in these States. For example, in 1977 the University of Arkansas at Fayetteville enrolled 4 percent black students, although traditionally white 4-year institutions in the State as a whole enrolled 11 percent black students. Oklahoma State University enrolled 3 percent black students, compared to 6 percent for the traditionally white institutions as a whole. Virginia Polytechnic Institute and State University enrolled 1 percent black students, while traditionally white institutions as a whole enrolled 5 percent black students. Since the major State universities have the greatest range of course and degree offerings and often are the major feeder institutions for State graduate and professional programs, black enrollment in these institutions must be increased substantially if equal opportunity is to be achieved. The criteria should require a reduction in disparate entrance rates at each institution in the system.

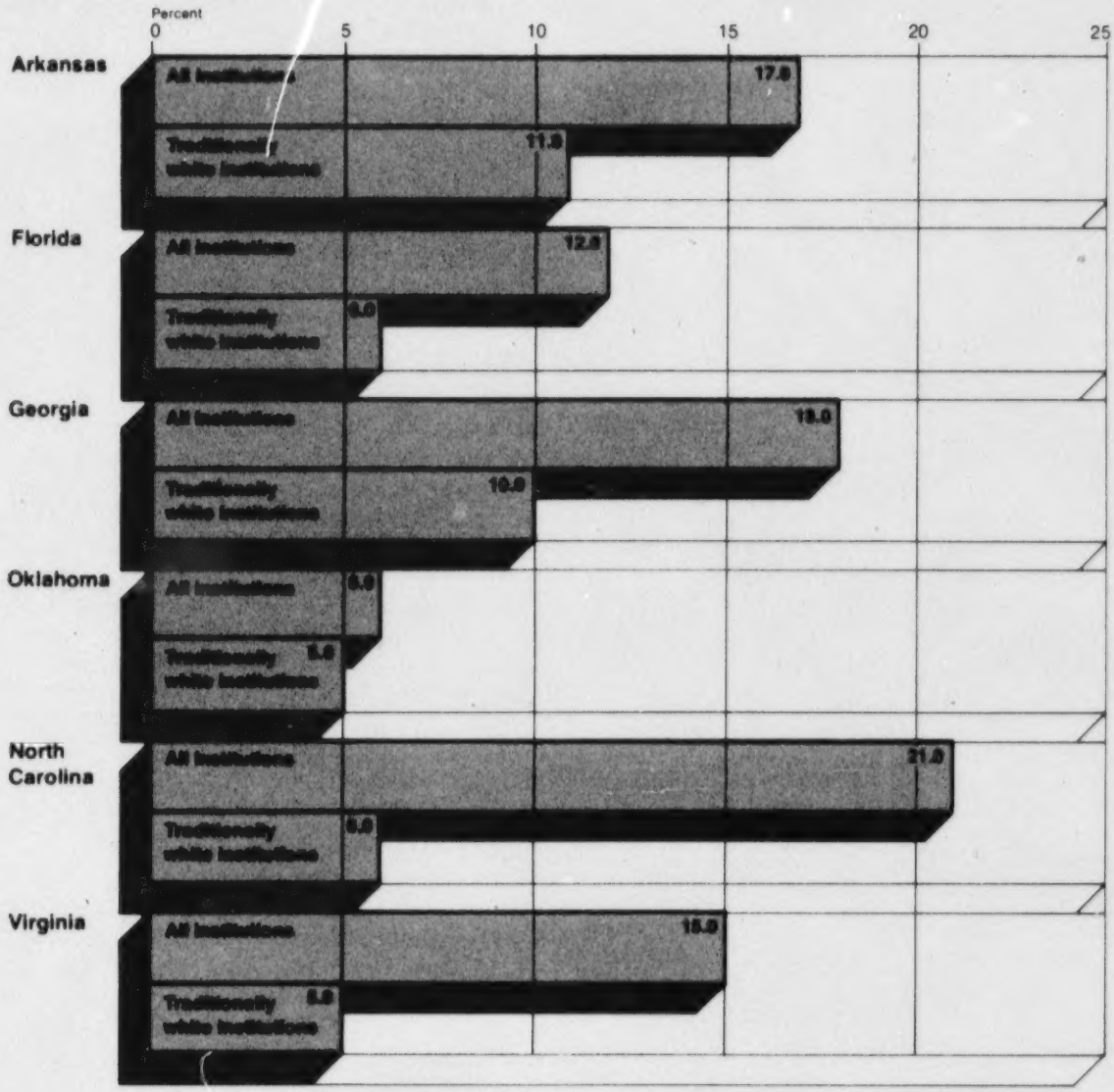
[80] To explain further the 150 percent requirement:

	State A	State B
Current black admission rate	1,000	500
Proportionate black admission rate	3,000	3,000
Disparity between current and proportionate rate	2,000	2,500
Reducing the disparity by 50%	1,000	1,750
5th year admission goal: reducing the disparity by 50% or by not more than 150% above current admission rate	2,000	1,250

Since State B is not required to increase black admissions by more than 150 percent above the current rate, the goal is 1,250 rather than 1,750.

Figure 2

Percentage of Black Enrollment in All Four-Year Institutions and in Traditionally White Four-Year Institutions, Fall 1977



This can be interpreted as follows: in Arkansas, 17.0 percent of the enrollment in all 4-year institutions was black, compared to 11.0 percent of the enrollment in tradtionally white 4-year institutions.

Source: U.S. Department of Health, Education, and Welfare, Office for Civil Rights, *Third Annual Report on Progress in Implementing State-wide Higher Education Desegregation Plans* (OCR 3000 Survey, 1977).

• *Adopt the goal that the proportion of black State residents who graduate from undergraduate institutions in the State system and enter graduate study or professional schools in the State system shall be at least equal to the proportion of white State residents who graduate from undergraduate institutions in the State system and enter such schools. In assessing progress toward this goal OCR will give consideration to the number of blacks from each State who enroll in graduate and professional schools outside the State system.*

At the graduate and professional levels, blacks were severely underrepresented in all of the *Adams* State systems (see figure 3). In Arkansas, for example, where blacks constituted 17 percent of the undergraduate enrollment, they were 7.9 percent of the graduate enrollment and 4.4 percent of the professional school enrollment. Twelve percent of the undergraduate enrollment in Florida's public institutions was black, compared to 7.4 percent of the graduate and 4.7 percent of the professional enrollment. In States where traditionally black institutions offered graduate and professional programs, black enrollment in these programs was substantially higher. In North Carolina, although 12.1 percent of the graduate enrollment and 15.4 percent of the professional enrollment in the system as a whole was black, 5.8 percent of the graduate and 9.6 percent of the professional enrollment in traditionally white institutions was black.

The criteria note that the goal of increasing black enrollment in graduate and professional schools was cited by the court of appeals in *Adams* as being of particular importance. To implement this goal the criteria suggest that States consider special recruitment efforts at traditionally black institutions and give attention to increasing black enrollment in and graduation from traditionally white undergraduate institutions that serve as "feeder institutions" for the State's graduate and professional schools. To be more effective, however, the criteria should require the States to undertake these and other measures. States might develop programs to improve the academic preparation of blacks already holding baccalaureates or those returning to school who may be deficient in some areas, such as science or mathematics. The criteria should also require the institutions to review their policies on part-time study, on eligibility requirements for fellowships, and on the required time limits for completing graduate and professional degrees to accommodate black students who may need to work while pursuing an advanced degree.

The criteria also propose giving consideration to the number of blacks from each State who enroll in graduate and professional schools outside the State system when assessing progress toward desegregation goals. Because States must assume responsibility for remedying the effects of past discrimination within their public education systems, special consideration should not be given to the number of blacks who enroll in private or out-of-State schools. This provision is reminiscent of the dual system practice of providing tuition grants for blacks to attend private or out-of-State graduate and professional schools. The Supreme Court of the United States in *Missouri ex rel. Gaines v. Canada* [81] ruled that out-of-State provisions for black higher education were unacceptable and that the State has a duty to provide "substantially equal" educational opportunities to all of its residents.

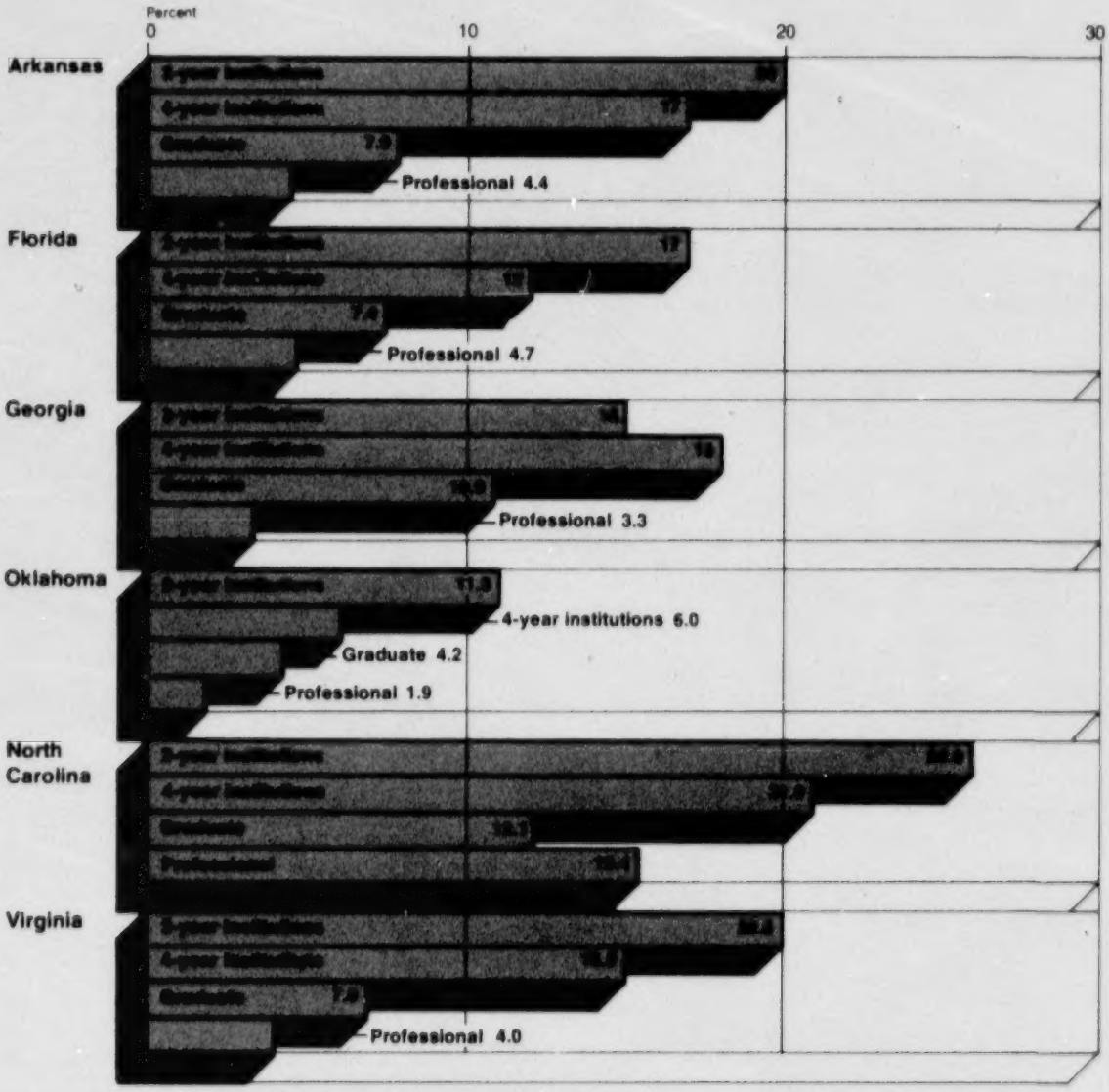
All of the criteria relating to increased enrollment of blacks require the adoption of numerical goals, but the States' implementation of the steps suggested to meet the goals—"reviewing, monitoring and revising, as necessary, procedures for student recruitment, admissions, compensatory instruction, counseling, financial aid, and staff and faculty development programs"[82]—must be monitored closely by HEW if they are to result in achievement of the goals. HEW's past experiences with higher education desegregation indicate that specific commitments and objectives concerning black recruitment and admission at traditionally white institutions are essential if the desegregation goals are to be met. The district court noted in *Adams* that the desegregation plans accepted by HEW in 1974 did not adequately address these and other areas and, as a result, failed to achieve even minimal progress towards desegregation.[83]

In the *Adams* litigation, the plaintiffs were concerned that desegregation plans provide more than "vague promises of affirmative recruiting" and "unsubstantiated paper projections."[84] The plaintiffs also wanted the plans to identify specific recruiting

[81] 305 U.S. 337 (1938).
[82] 43 Fed. Reg. 6662 (1978).
[83] Adams v. Califano, 430 F. Supp. 118, 119–20 (D.D.C. 1977).
[84] Adams v. Weinberger, Motion for Further Relief, at 13.

Figure 3

Percentage of Black Enrollment[1] at All Levels in the Six *Adams* States, 1977



[1] Graduate and professional enrollment includes part-time students.

This can be interpreted as follows: in Arkansas, blacks constituted 20.0 percent of the enrollment in 2-year institutions, 17.0 percent of the enrollment in 4-year institutions, 7.9 percent of the enrollment in graduate programs, and 4.4 percent of the enrollment in professional schools.

Source: U.S. Department of Health, Education, and Welfare, Office for Civil Rights, *Third Annual Report on Progress in Implementing State-wide Higher Education Desegregation Plans* (OCR 3000 Survey, 1977).

practices and to reassess admission policies in order to change racial enrollment patterns.[85] Both affirmative recruitment and admissions are necessary to overcome the effects of past discrimination. Regarding the need for special recruitment and admission efforts, HEW said:

> States may need to innovate in seeking out talented students who will profit from higher education. They may need to broaden definitions of potentials; to discount the effects of early disadvantage on the development of academic competence; and to broaden the talents measured in admissions tests. . . .[86]

In developing an action agenda for equal opportunity in higher education, the Carnegie Commission on Higher Education made a number of recommendations for increasing access to college. These included: improving elementary and secondary school programs; creating educational opportunity centers to provide counseling, testing, and guidance on educational opportunities; coordinating recruiting efforts by individual institutions to ensure adequate recruiting and counseling in advantaged and disadvantaged locations; and using institutional facilities during the summer as intensive counseling clinics especially oriented to the needs of disadvantaged students.[87]

- *Commit the State to take all reasonable steps to reduce any disparity between the proportion of black and white students completing and graduating from the 2-year, 4-year, and graduate public institutions and establish interim goals, to be specified by the State system, for achieving annual progress.*

The proportion of blacks earning baccalaureate degrees in 1977 in the six *Adams* State systems as a whole and in traditionally white institutions in particular was below the proportion of blacks enrolled in 4-year institutions (see table 3). For example, in Georgia where 18 percent of the undergraduate enrollment was black, 9.2 percent of the baccalaureate degrees were awarded to blacks. Enrollment in Georgia's traditionally white institutions was 10 percent black, and 4.8 percent of the baccalaureate degrees were awarded to blacks.

The relatively low representation of blacks among recipients of advanced degrees, particularly doctoral and professional degrees, was evident in all six States (see figure 4). In Arkansas 2.8 percent of the doctoral degrees and 3.7 percent of the professional degrees were awarded to blacks. The racial distribution of advanced degree earners further demonstrates the role that the traditionally black institution has had in providing educational opportunities for blacks. In North Carolina none of the five traditionally black institutions has a doctoral program, two have master's programs, and one, North Carolina Central, has a law school. In 1977 blacks earned 12.3 percent of the master's degrees in North Carolina; however, 62 percent of the master's degrees earned by blacks were awarded by the traditionally black institutions. In professional schools, blacks earned 10.9 percent of the degrees, 56 percent of which were awarded by the one traditionally black institution. Black representation among doctoral degree earners was 2.1 percent, a considerable drop from the proportion of blacks earning master's and professional degrees.

Despite the high concentration of blacks in 2-year institutions, blacks earned proportionately fewer of the associate degrees awarded than their representation in 2-year college enrollments (see table 4). For example, in Oklahoma, 11 percent of the students enrolled in 2-year institutions were black, compared to 6.8 percent of the students awarded associate degrees.

The significant disparity between graduation rates for black and white students indicates that retention of black students is a serious problem. Educators refer to the "revolving door" aspect of higher education desegregation, where blacks enroll increasingly in white institutions but do not graduate.[88]

In 1979 the Office for Civil Rights analyzed minority attrition in 233 predominantly white colleges and universities with a significant difference between the racial distribution of the freshman class in the fall of 1976 and that of the junior class in the fall of 1978.[89] The attrition rate for blacks from freshman to junior year was 65 percent, compared to

[85] *Id.*

[86] 43 Fed. Reg. 6659–60 (1978).

[87] Lewis B. Mayhew, *The Carnegie Commission on Higher Education* (San Francisco: Jossey-Bass, 1977), p. 79.

[88] James Lyons, "The Case for the Black College," *Southern Exposure—Just Schools*, vol. II, no. 2 (Summer 1979), pp. 134–35; 430 F. Supp. 118, 120 (D.D.C. 1977), deposition of Martin Gerry, Acting Director, Office of Civil Rights, HEW, Jan. 13, 1977, as reproduced in Institute for Services to Education, *A Critical Examination of The Adams Case: A Source Book*, comp. Leonard L. Haynes III (Washington, D.C., 1978) p. H–1.

[89] U.S., Department of Health, Education, and Welfare, Office for Civil Rights, "Targeting Analyses in Institutions of Higher Education Based on Excess Minority Attrition in Undergraduate Institutions and the Underrepresentation of Minorities and Females in Professional Schools" (unpublished report, July 1979). These analyses are to assist OCR in selecting institutions of higher education for compliance reviews. The target analyses

38 percent for whites. A similar analysis of sophomore and senior enrollments in 135 institutions showed attrition rates of 48 percent for blacks and 17 percent for whites.[90]

Two significant causes of student attrition are academic failure and lack of money.[91] These barriers are more likely to affect black students than white students because they are more likely to have attended inferior high schools (particularly poor, inner-city schools) and to have received inadequate academic training.[92] Additionally, black students are more likely to come from low-income families.[93] In 1976, for example, almost half of black freshman were from families earning $8,000 or less, compared to 7 percent of white freshmen.[94] In 1976 the Institute for the Study of Educational Policy (ISEP) found:

> The educational barriers arising from the interrelationships of college costs, financial aid program implementation and family income together constituted the most significant educational barriers for Black students. . . .These financial barriers affected distribution and persistence, as well as access.[95]

Financial barriers are even greater at the graduate and professional levels than at the undergraduate level because graduate and professional study costs more than undergraduate study and fewer student aid programs are available. The ISEP study found that the likelihood of entering advanced study was directly related to a student's ability to pay.[96]

As in the areas of student recruitment and admissions, the desegregation criteria must identify and require specific measures to achieve the goal of reducing disparate attrition rates. Among the measures that States might take to address the problem of retention are:

- An extensive retention study to determine the extent and causes of disparate attrition rates.
- A review of institutional curricula, particularly for freshman, to ensure that appropriate educational assistance is available for students with varied backgrounds.
- Special programs for educationally or financially disadvantaged students, such as preenrollment or summer study programs, study skill development programs, academic counseling, and financial aid programs.

At a July 1980 conference on the topic "Adams: Higher Education Desegregation," attended by representatives from most of the States that formerly operated *de jure* dual systems of higher education, black student retention was identified as a serious problem in many States.[97] Florida has begun a statewide longitudinal retention study using social security numbers to track students.[98] For each entering class, a data bank is set up that tracks each student by program and identifies "high risk" students (by such criteria as SAT scores and midsemester grades). If a student does not reappear after three consecutive quarters, he or she is classified as a dropout.[99] In Florida attrition rates are particularly high for those transfering from community colleges to 4-year institutions.[100] In an effort to provide assistance to high-risk students, some colleges require that all students on probation report for counseling.[101] Conference participants suggested that institutions conduct exit interviews for students who are not planning to return to identify reasons why they drop out.[102]

The criteria set specific goals for increasing black enrollment in the State systems; however, equality of opportunity cannot be achieved if institutions fail

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for excess minority attrition included: (a) a comparison of the 1976-77 freshmen minority enrollment in an institution with the 1978-79 junior enrollment of the same institution, and (b) a comparision of the 1976-77 sophomore minority enrollment in an institution with the 1978-79 senior enrollment of the same institution. The analysis was based on a subset of higher education institutions that reported data for HEW's "Higher Education General Information Survey (HEGIS) Enrollment Surveys" in 1976-77 and 1978-79. All institutions were included in the targeting analysis except those that fell into the following categories: (1) predominantly minority institutions (50 percent or more of total enrollment are minority students); (2) all 2-year institutions; (3) institutions with only graduate programs; (4) institutions of higher education with a nonminority enrollment of 95 percent or more; and (5) institutions of higher education located in outlying areas and U.S. service schools.

[90] Ibid.

[91] Howard University, Institute for the Study of Educational Policy, *Equal Educational Opportunity for Blacks in U.S. Higher Education: An Assessment* (Washington, D.C.: Howard University Press, 1976), pp. 85-166.

[92] Ibid., p. 145.

[93] Ibid.

[94] *How Open Is the Door?* p. xiii.

[95] Howard University, *Equal Educational Opportunity for Blacks in U.S. Higher Education*, p. 158.

[96] Ibid., pp. 121-23.

[97] The conference, sponsored by the Arkansas Department of Higher Education, was held in Little Rock, Arkansas, July 29-31, 1980. The States with representatives in attendance included: Arkansas, Florida, Georgia, Kentucky, Maryland, Missouri, Louisiana, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, and Virginia (hereafter cited as Little Rock Conference).

[98] Delores Auzenne, special assistant to the chancellor, Florida Board of Regents, statement at Little Rock Conference, July 30, 1980 (hereafter cited as Auzenne Statement).

[99] Ibid.

[100] Ibid.

[101] Ibid.

[102] Little Rock Conference, Session on Strategy Development for Student Recruitment and Retention, July 31, 1980.

Table 3

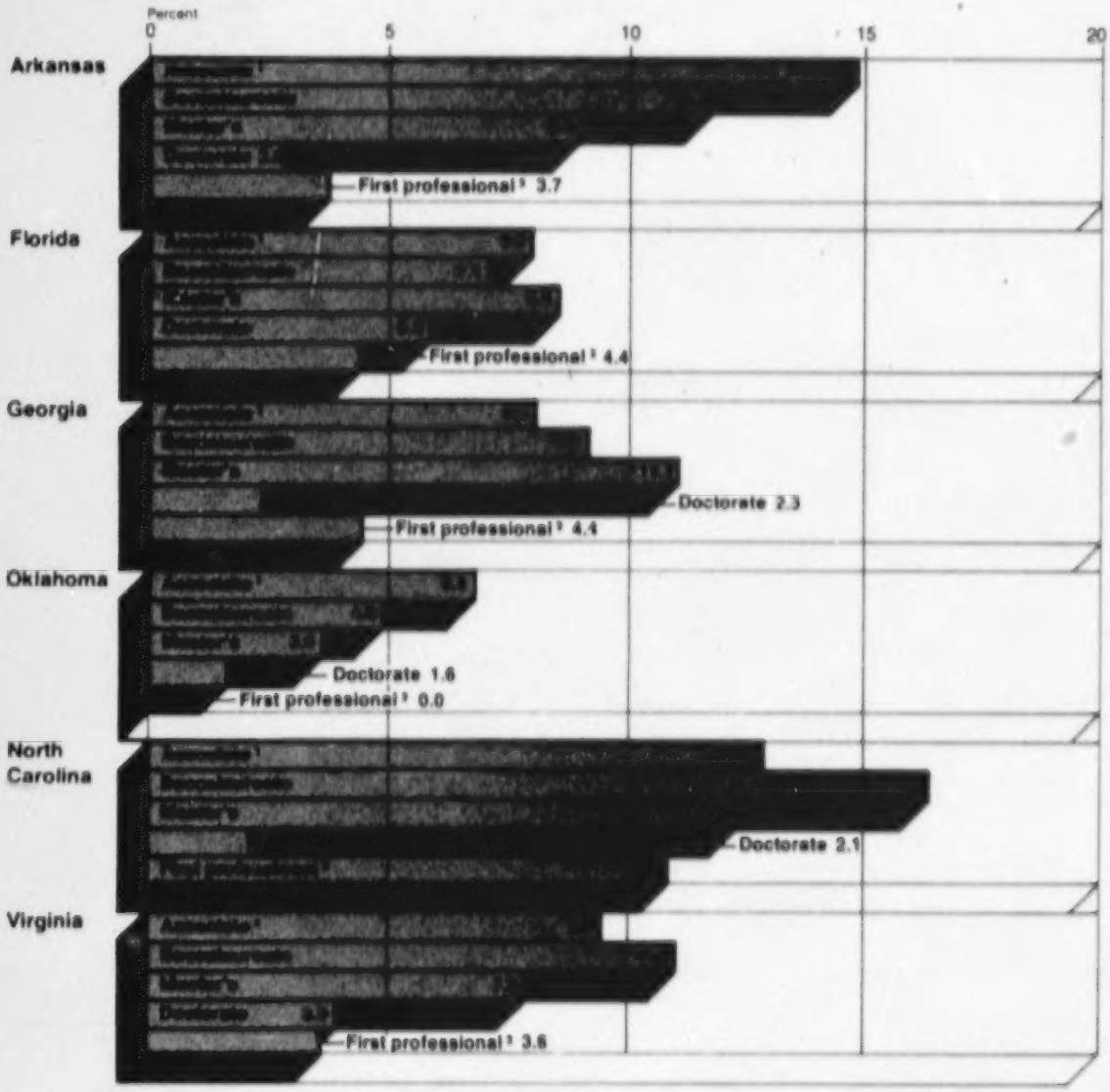
A Comparison of Black Enrollment and Baccalaureate Degrees Earned in the Six *Adams* States, Fall 1977

	Enrollment all 4-year institutions	Baccalaureate degrees earned		Enrollment 4-year traditionally white institutions	Baccalaureate degree earned 4-year traditionally black institutions	
	Percent	Number	Percent	Percent	Number	Percent
Arkansas	17.0	5,156	11.7	11.0	4,814	6.1
Florida	12.0	20,565	7.1	6.0	19,882	4.2
Georgia	18.0	12,580	9.2	10.0	11,898	4.8
Oklahoma	6.0	10,191	4.9	5.0	10,013	3.2
North Carolina	21.0	15,779	16.3	6.0	13,467	3.3
Virginia	15.0	15,706	11.1	5.0	14,300	3.0

Source: U.S. Department of Health, Education, and Welfare, Office for Civil Rights, *Third Annual Report on Progress in Implementing State-wide Higher Education Desegregation Plans* (OCR 3000 Survey, 1977).

Figure 4

Percentage of Degrees Earned by Blacks in the Six *Adams* States, July 1, 1976 - June 30, 1977



[1] Includes only those associate degrees awarded at 2-year institutions.

[2] A first professional degree is one that meets the following criteria: (1) it signifies completion of the academic requirements to begin a practice in a profession, (2) it is based on a program that requires at least 2 years of college work prior to entrance, and (3) a total of at least 6 academic years of college work to complete the program.

This can be interpreted as follows: in Arkansas, blacks earned 14.8 percent of the associate degrees, 11.7 percent of the baccalaureate degrees, 9.0 percent of the master's degrees, 2.8 percent of the doctorates, and 3.7 percent of the first professional degrees.

Source: U. S. Department of Health, Education, and Welfare, Office for Civil Rights, *Third Annual Report on Progress in Implementing State-wide Higher Education Desegregation Plans* (OCR 3000 Survey, 1977).

Table 4

A Comparison of Black Enrollment and Associate Degrees Earned [1] in the Six *Adams* States, Fall 1977

	Percent black enrollment in 2-year institutions	Associate degrees earned	
	Percent	Number	Percent
Arkansas	20.0	868	14.8
Florida	17.0	25,021	8.0
Georgia	15.0	2,989	8.1
Oklahoma	11.0	4,657	6.8
North Carolina	26.0	8,696	12.9
Virginia	20.0	6,004	9.5

[1] Includes only associate degrees awarded at 2-year institutions.

Source: U. S. Department of Health, Education, and Welfare, Office for Civil Rights, *Third Annual Report on Progress in Implementing State-wide Higher Education Desegregation Plans* (OCR 3000 Survey, 1977).

to increase and retain the number of black graduates at all levels of the system.

• *Commit the State to expand mobility between 2-year and 4-year institutions as a means of meeting the goals set forth in these criteria.*

Because black students were proportionately better represented in 2-year institutions in the six *Adams* States (see table 2), the 2-year colleges are an important source for recruiting blacks to attend 4-year institutions. The desegregation criteria should not only require State commitments to expand mobility from 2-year to 4-year institutions, but should also identify and require specific measures for achieving this goal.

Two-year colleges extend access to higher education to high school graduates or otherwise qualified students.[103] The growth of 2-year colleges over the last few decades has been attributed to their open admission policies, their geographic distribution, their usually low tuition rates, and the wide variety of programs they offer.[104] Two-year institutions generally are representative racially of the communities they serve.[105] These institutions offer dual curricula—academic programs leading to transfer to 4-year institutions and technical-vocational programs that may be completed at the 2-year institutions.[106]

Data on 2-year college enrollment show, that, although a large percentage of students entering 2-year institutions indicate a desire to transfer to 4-year institutions, the proportion who do is relatively small.[107] Furthermore, attrition rates at 2-year institutions have been consistently higher than those at 4-year institutions.[108] Many 2-year college students who do transfer to 4-year colleges, however, have academic records comparable to those of students who began in 4-year institutions.[109]

Florida has one of the most extensive public 2-year college systems in the Nation. In 1977 more than 80,000 full-time students were enrolled in 2-year institutions in the Florida system. Over 20,000 associate degrees creditable toward a baccalaureate degree were awarded, and in addition, 6,600 associate degrees not wholly creditable toward a baccalaureate were awarded. In Florida, public 2-year institutions have transfer or articulation agreements whereby any student with an associate of arts degree can be admitted to a State 4-year institution.[110] The Florida articulation programs have structured course outlines requiring students to take transferable credits.[111] Fifty-eight percent of the students in Florida's 4-year institutions transferred from the community college system.[112]

To increase enrollment at traditionally white institutions, States should take steps to facilitate articulation between 2-year to 4-year institutions. Such steps might include:

• Providing academic counseling to entering students and developing other measures to ensure that black students are not channeled disproportionately into technical or vocational programs.

• Providing a more structured core of required courses at 2-year institutions geared toward 4-year college requirements.

• Giving special attention to the needs of students in academic transfer programs to ensure that these students are given first priority to transfer to 4-year institutions.

• *Adopt the goal of increasing the proportion of white students attending traditionally black institutions.*

The criteria specify that the establishment of numerical goals for the enrollment of white students at traditionally black institutions must be preceded by an increased enrollment of black students at traditionally white institutions and by the achievement of specific steps to strengthen the black institutions. The reason for deferring this objective is to guard against the possibility that desegregation efforts may result in a diminution of higher education opportunities for blacks. If whites enroll at traditionally black institutions without a concomitant enrollment of blacks at traditionally white institutions, the result will be a decrease in the overall percentage of blacks enrolled in the system.

The National Association for Equal Opportunity in Higher Education, an organization representing 110 black college presidents, filed two *amicus curiae* briefs in the course of the *Adams* litigation expressing its concern about the possible adverse effects of desegregation on the future of black colleges and

[103] Carnegie Commission on Higher Education, *The Open-Door Colleges* (New York: McGraw-Hill, June 1970), pp. 1-13.
[104] Ibid., p. 12.
[105] Roger Yarrington, vice president, American Association of Community and Junior Colleges, telephone interview, Nov. 14, 1980.
[106] Howard University, Institute for the Study of Educational Policy, *The Dilemma of Access: Minorities in Two Year Colleges*, by Micheal A. Olivas (Washington, D.C.: Howard University Press, 1979), p. 11.
[107] Mayhew, *The Carnegie Commission on Higher Education*, pp. 150-51; Carnegie Commission, *The Open-Door Colleges*, p. 18.
[108] Mayhew, *The Carnegie Commission on Higher Education*, p. 150.
[109] Ibid., p. 151.
[110] Auzenne Statement.
[111] Ibid.
[112] Ibid.

their primary mission of educating black Americans.[113] The court of appeals noted that black institutions "currently fulfill a crucial need and will continue to play an important role in Black higher education."[114] The district court subsequently instructed HEW to devise criteria for higher education desegregation that would not place a greater burden on black institutions or black students: "The desegregation process should take into account the unique status of the Black colleges and the real danger that desegregation will diminish higher education opportunities for blacks."[115]

The Commission supports HEW's deferral of the goal of increasing white enrollment at traditionally black institutions until there is a substantial increase in black enrollment at traditionally white institutions. The Office for Civil Rights, however, should take appropriate steps to ensure that substantial progress is made within a reasonable period in achieving the goals related to black enrollment and to strengthening the role of the black institutions.

Desegregation of Faculty and Staffs

State desegregation plans are to provide for increased employment of blacks in academic and nonacademic positions throughout the system and for the increased representation of blacks among appointive positions on the governing boards of the State system and of individual institutions. The criteria contain a series of goals to be adopted by the States that are to increase the number of blacks employed in institutions of higher education.

- *Adopt the goal that the proportion of black faculty and of administrators at each institution and on the staff of each governing board, or any other State higher education entity in positions not requiring the doctoral degree, shall at least equal the proportion of black students graduating with master's degrees in the appropriate discipline from institutions within the State system, or the proportion of black individuals with the required credentials for such positions in the relevant labor market area, whichever is greater.*
- *Adopt the goal that the proportion of black faculty and administrators at each institution and on the staff of each governing board, or any other State higher education entity, in positions requiring the doctoral degree, shall at least equal the proportion of black individuals with the credentials required for such positions in the relevant labor market area.*
- *Assure hereafter and until the foregoing goals are met that, for the traditionally white institutions as a whole, the proportion of blacks hired to fill faculty and administrative vacancies shall not be less than the proportion of black individuals with the credentials required for such positions in the relevant labor market area.*

In 1977 in the six *Adams* States, public higher education institutions remained racially identifiable by faculty and staff. An analysis of employment patterns showed:

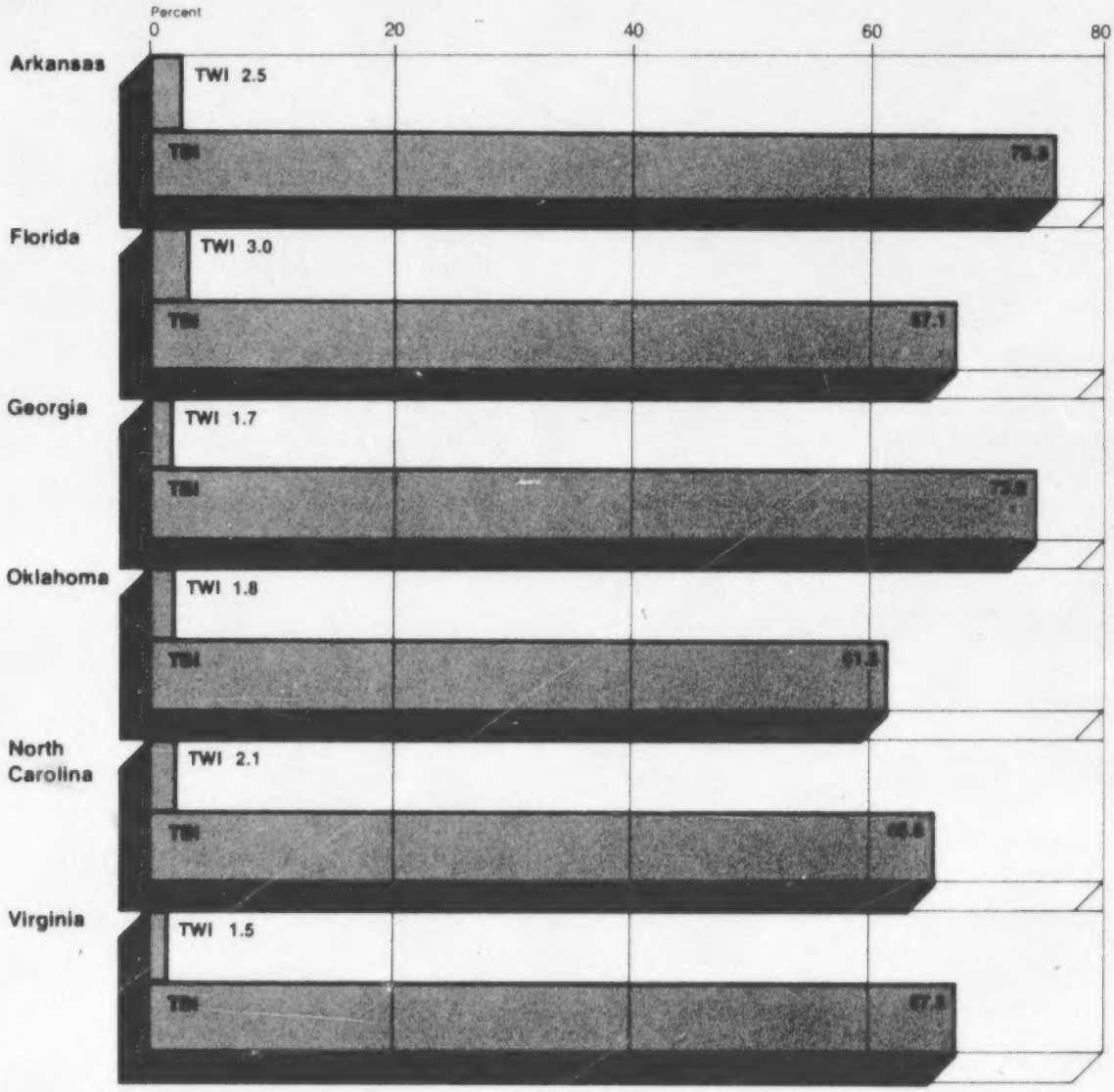
- Black representation on faculties at traditionally white institutions was extremely low. Blacks were less than 3 percent of the full-time instructional faculty at traditionally white institutions in all six States (see figure 5).
- Black representation on faculties at 2-year institutions was somewhat higher than their representation on faculties at 4-year traditionally white institutions. Blacks ranged from 3.3 percent of the 2-year faculty in Oklahoma to 8.1 percent in Florida (see table 5).
- Black representation in noninstructional professional positions at traditionally white institutions was significantly below their representation in the population, but higher than their representation in instructional faculty positions (see tables 6 and 7). In five of six States, the majority of black faculty in the 4-year institutions was concentrated in traditionally black institutions (see figure 6). A 1979 study of the racial composition of faculties in public colleges and universities found similar patterns of segregated employment in 14 of the 17 Southern and Border States.[116]

Desegregation has progressed least in faculty and staff employment at traditionally white institutions. In spite of this lack of progress, the criteria designed to bring about employment desegregation are not strong enough to achieve their goal. First, the criteria emphasize short-term goals based on the proportion of blacks with advanced degrees current-

[113] Adams v. Califano, 430 F. Supp. 118, 120, n.1 (D.D.C. 1977).
[114] Adams v. Richardson, 480 F.2d 1159, 1164–65 (D.C. Cir. 1973).
[115] 430 F. Supp. 118, 120 (D.D.C. 1977).
[116] Eva C. Galambos, *Racial Composition of Faculties in Public Colleges and Universities of the South* (Atlanta: Southern Regional Education Board, 1979), pp. 1, 10. The 14 States studied were Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia, and West Virginia. The data covered faculty employed full time either in 1976–77 or 1977–78; in less than 5 percent of the reporting institutions the data pertain to 1975–76.

Figure 5

Percentage Black, Full-Time Instructional Faculty at Traditionally White Institutions (TWIs) and Traditionally Black Institutions (TBIs) in the Six *Adams* States, Fall 1977



This can be interpreted as follows: in Arkansas 2.5 percent of the faculty at TWIs is black, compared to 75.3 percent of the faculty at TBIs.

Source: U.S. Department of Health, Education, and Welfare, Office for Civil Rights, *Third Annual Report on Progress in Implementing State-wide Higher Education Desegregation Plans* (OCR 3000 Survey, 1977).

Table 5

Full-Time Instructional Faculty in Public Institutions in the Six *Adams* States, Fall 1977

	4-year institutions				2-year institutions [1]	
	TWIs		TBIs			
	Total	Percent black	Total	Percent black	Total	Percent black
Arkansas	2,403	2.5	158	75.3	303	7.6
Florida	5,590	3.0	307	67.1	4,403	8.1
Georgia	5,483	1.7	410	73.9	865	6.4
Oklahoma	3,591	1.8	78	61.5	1,035	3.3
North Carolina	5,450	2.1	918	65.6	3,056	6.6
Virginia	6,609	1.5	618	67.3	1,968	6.0

[1] Two-year institutions have not been categorized as TWIs (traditionally white institutions) or TBIs (traditionally black institutions).

Source: U. S. Department of Health, Education, and Welfare, Office for Civil Rights, *Third Annual Report on Progress in Implementing State-wide Higher Education Desegregation Plans* (OCR 3000 Survey, 1977).

Table 6

Part-Time Instructional Faculty in Public Institutions in the Six *Adams* States, Fall 1977

	4-year institutions				2-year institutions [1]	
	TWIs		TBIs			
	Total	Percent black	Total	Percent black	Total	Percent black
Arkansas	592	1.9	147	84.4	151	9.3
Florida	372	1.3	4	50.0	5,717	10.2
Georgia	918	2.9	19	52.6	292	13.7
Oklahoma	643	2.5	4	50.0	1,510	2.7
North Carolina	214	1.9	21	66.7	2,724	8.0
Virginia	461	3.5	65	70.7	26	3.9

[1] Two-year institutions have not been categorized as TWIs (traditionally white institutions) or TBIs (traditionally black institutions).

Source: U. S. Department of Health, Education, and Welfare, Office for Civil Rights, *Third Annual Report on Progress in Implementing State-wide Higher Education Desegregation Plans* (OCR 3000 Survey, 1977).

Table 7

Full-Time, Noninstructional, Professional Employees [1] in Public Institutions in the Six *Adams* States, Fall 1977

	4-year institutions				2-year institutions [2]	
	TWIs		TBIs			
	Total	Percent black	Total	Percent black	Total	Percent black
Arkansas	1,535	7.9	132	91.7	130	7.7
Florida	3,200	4.8	173	77.5	1,341	8.6
Georgia	3,672	5.7	195	89.7	418	7.7
Oklahoma	2,156	5.5	41	92.7	354	6.2
North Carolina	2,477	4.7	358	87.4	1,397	11.8
Virginia	5,068	7.9	168	89.3	829	10.0

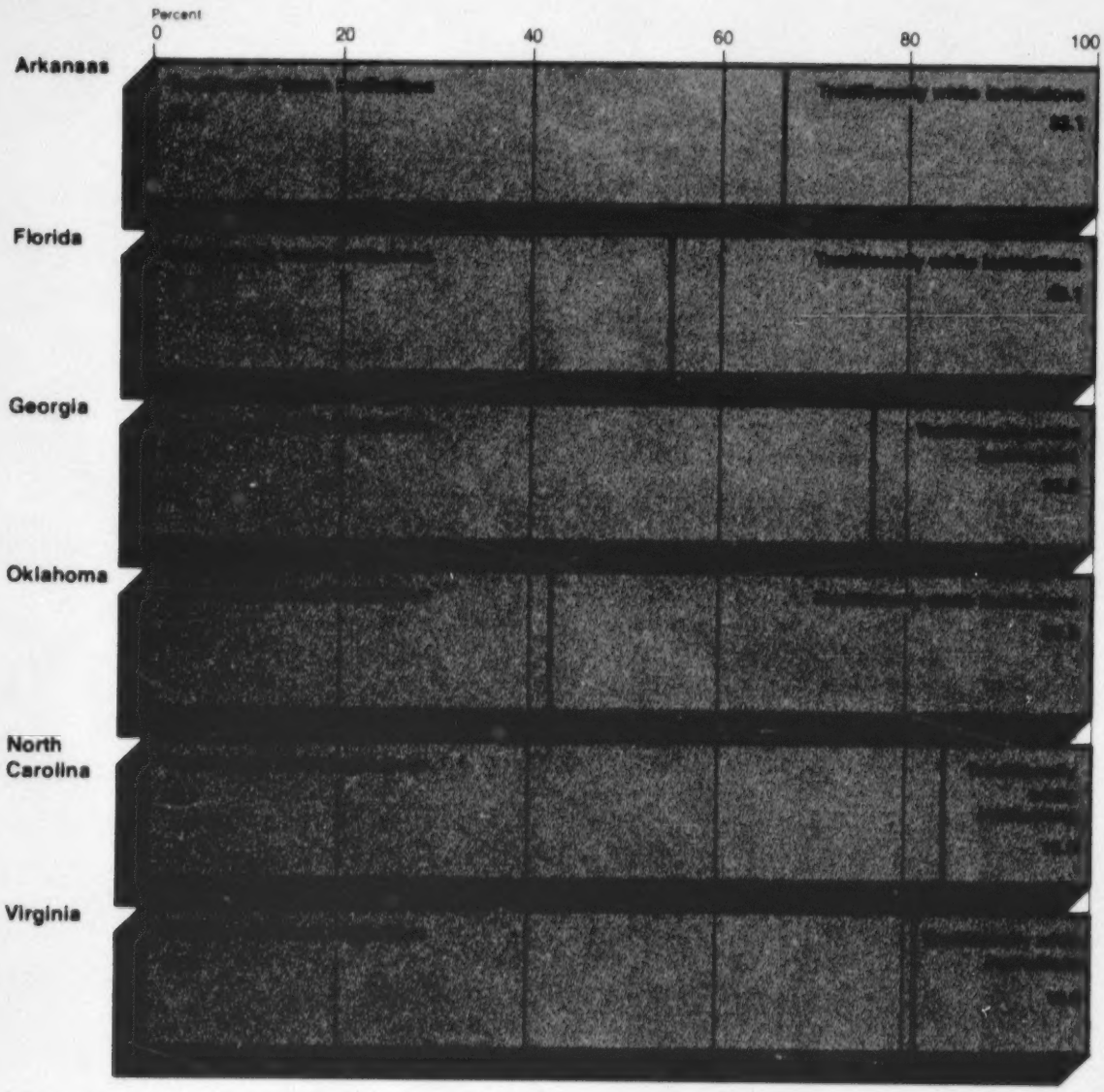
[1] Includes executive, managerial, administrative, and professional nonfaculty employees.

[2] Two-year institutions have not been categorized as TWIs (traditionally white institutions) or TBIs (traditionally black institutions).

Source: U. S. Department of Health, Education, and Welfare, Office for Civil Rights, *Third Annual Report on Progress in Implementing State-wide Higher Education Desegregation Plans* (OCR 3000 Survey, 1977).

Figure 6

Distribution of Black Full-Time Instructional Faculty in Public Four-Year Institutions in the Six *Adams* States, Fall 1977



This can be interpreted as follows: in Arkansas, 66.9 percent of all black faculty were in traditionally black institutions and 33.1 percent were in traditionally white institutions.

Source: U.S. Department of Health, Education, and Welfare, Office for Civil Rights, *Third Annual Report on Progress in Implementing State-wide Higher Education Desegregation Plans* (OCR 3000 Survey, 1977).

ly in the labor market; second, the remedies suggested in the criteria[117] do not always take into account the effect that historic discrimination has had on limiting the supply of blacks with advanced degrees; third, the proposed remedies are not mandated.

The criteria goals for faculty and staff desegregation use as a target the proportion of blacks graduating with appropriate degrees from State universities or those with the required credentials in the relevant labor market.[118] Faculty positions with the academic rank of assistant professor, associate professor, or professor generally require the doctoral degree. In 1978, 90.4 percent of the full-time instructional faculty in public universities and 86.7 percent of those in other 4-year public institutions had the rank of professor, associate professor, or assistant professor.[119]

Some of the disparities in employment of black faculty may be accounted for by the limited number of blacks with doctorates and by the overrepresentation of those with the doctoral degree in certain disciplines. In 1975–76, blacks earned 3.6 percent of the doctorates awarded in the United States and 3.2 percent of those awarded in the 17 Southern and Border States.[120] Over half of the 1,213 doctorates awarded to blacks nationally were in the field of education.[121]

The limited number of blacks with doctorates and black overrepresentation in the education discipline are both outcomes of past discrimination in employment and educational opportunities. Historically, the primary source of higher education opportunities for blacks was the traditionally black institution. These institutions provided limited opportunities for graduate study. Traditionally, career opportunities for blacks have centered on teaching, and under segregation, this meant teaching in black elementary and secondary schools and black colleges.[122] For this reason, the training of teachers has been the primary mission of most traditionally black higher education institutions.[123] Because the traditionally black institution has been the principal source of employment for black doctorates, they have chosen education as their field of specialization.[124]

The employment of black faculty in the traditionally white institutions continues to be extremely low (see figure 5). The Southern Regional Education Board has said:

> Until there is an increase in the number of advanced degrees earned by blacks in the region, especially at the doctoral level, and until black graduate students are more widely dispersed among disciplines other than education, it will be very difficult to increase black representation on college faculties in the region.[125]

A 1979 analysis of affirmative action in employment in higher education by the Institute for the Study of Educational Policy concluded:

> The principal effect of this long-term discrimination was to discourage the formation of larger supplies of qualified manpower. . . .Affirmative action in employment by. . . .institutions which have traditionally denied opportunity to blacks is an important and necessary step to ensuring increases in the supply of qualified manpower.[126]

Given the low proportion of black faculty and administrators at traditionally white institutions and the low proportion of blacks with advanced degrees, it is certain that if substantial faculty desegregation is to occur in the foreseeable future, the criteria should require that State plans include: (1) effective, affirmative recruitment and selection programs; (2) specific programs to advance current black faculty; (3) long-range plans to increase the pool of blacks with the required credentials for faculty positions; and (4) an ongoing plan to reexamine the credentials that are required for faculty positions.

Recruitment. The criteria note that one way of increasing the number of black faculty is the maintenance of a centralized recruiting system. An example of such a system is that of the State of Florida,

[117] The measures suggested by OCR are as follows: "employment programs providing centralized recruitment, vacancy and applicant listings, transfer options, faculty development programs permitting release time for black faculty to attain the terminal degree, and the interchange of faculty on a temporary or permanent basis among traditionally white and traditionally black institutions within the State system." 43 Fed. Reg. 6663 (1978).

[118] The HEW criteria define the labor market as the geographical area in which an institution or campus traditionally recruits or draws applicants possessing the requisite credentials for vacancies in faculty, administrative, or nonacademic personnel positions. 43 Fed. Reg. 6663 (1978).

[119] *The Condition of Education* (1979), p. 120, table 3.13.

[120] *Data on Earned Degrees*, vol. II, pp. 926, 942, tables 13 and 18.

[121] Ibid., p. 373, table 8.

[122] Howard University, Institute for the Study of Educational Policy, *The Case for Affirmative Action for Blacks in Higher Education*, by John E. Fleming, Gerald R. Gill, and David H. Swinton (Washington D.C.: Howard University Press, 1978), pp. 220–22 (hereafter cited as *The Case for Affirmative Action*).

[123] Ibid.

[124] Ibid.

[125] Galambos, *Racial Composition of Faculties*, Highlights.

[126] *The Case for Affirmative Action*, p. 222.

which has instituted a centralized vacancy listing system for all institutions and which maintains a computerized applicant data pool.[127] States should also develop sources for potential applicants such as traditionally black institutions; black professional organizations; the National Association for Equal Opportunity in Higher Education, which maintains a referral pool; and the Southern Regional Education Board that can help identify applicants. The public and private sectors employ significant numbers of blacks with advanced degrees. Realizing that the state of the economy greatly influences job choices and that college faculty positions are often less remunerative than others, private industry and government, nevertheless, can be tapped as a source for recruiting black faculty and administrators.

Recruitment and selection procedures should include provisions for maintaining records on the procedures used to identify and evaluate black applicants. Since most faculty appointments are initiated by the departments within an institution, department search and selection committees should include blacks.[128] Traditionally white institutions having problems attracting black faculty because of their locations might consider offering blacks opportunities to teach in summer sessions in an effort to attract faculty and familiarize them with the opportunities available at their institutions.

Faculty development programs. The criteria also note that desegregation plans may include faculty development programs. Such programs should include specific measures to advance current black faculty by providing opportunities for them to obtain the doctoral degree, such as leaves of absence for study and professional development. Such programs are particularly appropriate for black faculty in 2-year institutions who often hold master's degrees. Four-year institutions offering fellowships to faculty on a work-study basis can also increase the number of blacks eligible to teach at the university level.

Other programs to increase the pool of blacks with appropriate degrees. States should also develop programs that are coordinated with the student desegregation effort to increase the number of black graduate and professional students, thereby increasing the pool of blacks holding doctoral and other professional degrees. Although student desegregation efforts should concentrate on recruiting in-State students, efforts to increase the pool of black doctorates can include out-of-State sources as well. Graduate students and faculty members can be used to recruit at traditionally black public and private institutions and at universities in other parts of the country. Appointing black graduate students to teaching or research assistant positions not only provides financial assistance to these students, but might also stimulate their interest in pursuing careers as college professors. Particular attention should be given to increasing the number of blacks with degrees in the disciplines in which they are underrepresented and in disciplines that represent growth areas for the 1980s such as architecture, computer science, and health services.[129]

Reexamination of the credentials required for faculty employment. Although colleges and universities traditionally require the doctorate in the overwhelming majority of faculty positions, special circumstances often dictate a change in this policy. In the 1960s when institutions experienced both a rapid growth in enrollment and a shortage of qualified applicants for faculty positions, they frequently hired persons who had not completed the requirements for the doctorate as "acting assistant professors."[130] More recently, the trend toward hiring nontenure-track faculty has been precipitated by projected declines in enrollment, budget constraints, and faculty retrenchment plans.[131] Many institutions are reluctant to hire permanent faculty members and prefer to hire nontenured faculty with master's degrees to teach introductory courses.[132] In the academic year ending in 1977, less than 50 percent of new hires in 10 disciplines at 4-year institutions held doctorates.[133]

Four-year institutions can increase the number of black faculty and give them the opportunity to obtain the terminal degree by hiring blacks with master's degrees in entry-level, instructor, and lecturer positions. Since a higher proportion of the faculty at 2-year institutions tend to have less than

[127] Auzenne Statement.

[128] Carnegie Council on Policy Studies in Higher Education, *Making Affirmative Action Work in Higher Education* (San Francisco: Jossey-Bass, 1975), p. 59.

[129] *Educational Factors Relating to the Criteria*, p. 41.

[130] Carnegie Council, *Making Affirmative Action Work in Higher Education*, p. 133.

[131] *The Condition of Education* (1979), p. 93.

[132] Ibid.

[133] The 10 disciplines were: agriculture and natural resources, arts and humanities, biological sciences, business and management, education, engineering, mathematics, physical science, social science (basic), and social sciences (other). Ibid., pp. 122–23, table 3.14.

the doctoral degree, this provides an additional source for black faculty who can be encouraged to pursue the doctoral degree and teach at 4-year institutions.[134]

The projected decline in enrollment in higher education, together with the elimination of mandatory retirement and an increasing proportion of faculty with tenure, will result in fewer opportunities for faculty employment in the 1980s.[135] This undoubtedly will pose some difficulties in meeting desegregation goals. These factors, however, should not be used as an excuse for delaying the desegregation process. Long-range State plans for higher education should address these issues and provide mechanisms to help ensure that faculty desegregation is achieved.

Areas Not Addressed by the Criteria

As States move toward a unitary system of higher education in which there are more white students and faculty at the traditionally black institutions, some assurances are needed that black administrators and black faculty are not displaced. The desegregation criteria neglect to address this important concern. Desegregation at the elementary and secondary level resulted in the displacement of thousands of black teachers and administrators who were systematically dismissed, demoted, or pressured to resign when schools were desegregated.[136] Black administrators, primarily principals, experienced the greatest displacement.[137] In light of these experiences, it is essential that the higher education desegregation criteria provide safeguards to help ensure that such occurrences will not be repeated. In November 1973, HEW sent letters to each of the *Adams* States outlining guidelines for developing desegregation plans. Included in these guidelines were prohibitions against the reassignment of faculty to the detriment of eligibility for tenure and other employee benefits.[138] HEW further noted that, "Any reduction in the percentage of tenured or non-tenured black faculty and staff in the system will be presumed to violate Title VI."[139] These prohibitions and presumptions should have been included in the present criteria.

The 1973 guidelines also provided for ending discrimination in policies and practices at individual institutions related to college-supported housing, health care, employment services, training assignments, intercollegiate athletic programs, and other extracurricular activities. In many instances discrimination persists in these areas. For example, in intercollegiate athletics in the Southern and Border States, the majority of black and white colleges belong to segregated conferences within the National Collegiate Athletic Association or other athletic associations.[140] The present desegregation criteria, however, do not address any of these areas.

The desegregation criteria are based on the principle that where there has been *de jure* segregation States have a duty to take affirmative remedial steps to achieve results in overcoming the effects of prior discrimination.[141] Segregation and long-standing racial inequities in State systems of higher education continue to exist over a quarter of a century after the *Brown* decision outlawed segregation in public education. The higher education desegregation criteria lack the specificity needed to achieve significant results in remedying these inequities.

Substantial progress in implementing the desegregation plans developed pursuant to these criteria has not been made. In July 1980 higher education representatives from the *Adams* States indicated problems in all of the criteria areas—enhancing the traditionally black institutions, increasing black enrollment, and increasing black faculty.[142] Cynthia G. Brown, Assistant Secretary for Civil Rights, Department of Education, addressing a meeting of higher

[134] Ibid., p. 93.
[135] *Educational Factors Relating to the Criteria*, pp. 3, 41.
[136] U.S. Commission on Civil Rights, *Twenty Years After Brown* (1977), p. 57. See also, National Education Association, "Report on Task Force Appointed to Study the Problems of Displaced Personnel Related to School Desegregation," December 1964; Robert Hooker, *Displacement of Black Teachers in the Eleven Southern States* (Nashville: Race Relations Information Center, 1970); U.S., Congress, Senate, Select Committee on Equal Educational Opportunity, *Hearings*, 91st Cong., 2d sess., 1970, pt. 3-A, pp. 1017-20, 1043-47.
[137] Ibid.
[138] Peter E. Holmes, Director, Office for Civil Rights, HEW, letter to Linwood Holton, Governor of Virginia, Nov. 10, 1973.
[139] Peter E. Holmes, Director, Office for Civil Rights, HEW, letter to George L. Simpson, Jr., chancellor, University System of Georgia, Nov. 10, 1973.
[140] National Association of Collegiate Directors of Athletics, *The 1978-1979 National Directory of College Athletics* (Men's Edition). Intercollegiate athletics at black colleges have suffered from inadequate funding and inadequate facilities. Despite the handicaps of discrimination and segregation, black athletic conferences and individual institutions have made notable athletic achievements, particularly in Olympic competitions and in the professional sports area. For further information, see "How Negro Colleges Tumbled Sports Barriers," *Negro Digest*, November 1962, pp. 28-37, exerpted from A.S. "Doc" Young, *Negro Firsts in Sports* (Chicago: Johnson Publishing Co., 1962); Ocania Chalk, *Black College Sports* (New York: Dodd, Mead & Co., 1976).
[141] 43 Fed. Reg. 6659 (1978).
[142] Little Rock Conference.

education officials from the Southern and Border States, said:

> one of the objectives set forth in the *Criteria*, is to bring black access to higher education to parity with white access. Our data indicate a substantial gap remaining in your States. Using high school graduates from the previous spring as a pool, fall 1978 enrollment in the. . .five States implementing plans. . .the white college-going rate was 24.1 percent greater than the black rate. . . . information regarding enrollment at the traditionally black institutions is the most distressing and demonstrates the need for vigorous efforts to strengthen and enhance traditionally black colleges. Not only did total enrollment in the traditionally black colleges decrease during the 1978/79 academic year, but white enrollment. . .decreased markedly, except at the graduate level.[143]

The desegregation criteria authorize the Office for Civil Rights to impose more stringent requirements on States for failure to meet interim goals.[144] It is an appropriate time for OCR to review and evaluate the desegregation process in the *Adams* States and to require States that are not meeting their goals to adopt more effective steps which will result in the dismantling of the dual system.

[143] "Remarks by Cynthia G. Brown on *Adams* Higher Education Desegregation," a paper presented at the Little Rock Conference, July 30, 1980, p. 7.

[144] 43 Fed. Reg. 6663 (1978).

4. Summary and Conclusion

The history of higher educational opportunities for blacks is replete with discrimination and deprivation. Until 1954 segregation in education and its inherent injustices were sanctioned by law or custom in many areas of the Nation. In that year, in its historic *Brown* decision, the Supreme Court of the United States declared that segregation in public education is unconstitutional.[1] The opportunity to receive an education is a right that must be made available to all Americans on equal terms.[2]

The *Brown* decision had little immediate effect on the elimination of segregation and discrimination in public higher education. Title VI of the Civil Rights Act of 1964 forbids discrimination in programs or activities receiving Federal financial assistance.[3] Federal efforts to enforce Title VI in State systems of higher education, however, were inadequate as blacks continued to be the victims of segregation in public higher education.

As a result of *Adams v. Califano*, the Department of Health, Education, and Welfare was ordered to begin enforcement of Title VI in six States that continued to operate dual systems of higher education.[4] Pursuant to the *Adams* decision, HEW developed specific criteria specifying the ingredients of an acceptable plan for desegregating State systems of higher education.

Overall, these criteria represent a positive step toward dismantling dual systems of higher education. The Commission, however, believes that a stronger, more vigorous effort to implement the criteria is needed if equal opportunity is to be achieved for this and succeeding generations of black students. The criteria rely too heavily on commitments that States will act to end segregation in their higher education systems. The experience to date with desegregation of higher education, as with elementary and secondary school desegregation, has shown that reliance on good faith intentions to achieve a unitary system does not work. Specific, affirmative steps must be mandated if the effects of past discrimination are to be overcome.

In view of their weaknesses, the criteria will be even less effective if there is limited commitment at the Federal level to monitor and enforce their implementation. This is particularly essential in light of past experiences with higher education desegregation when HEW accepted inadequate plans that failed to achieve significant progress toward desegregation.[5] The success or failure of current desegregation efforts relies heavily on the effectiveness of the Federal civil rights enforcement effort.

The new Department of Education has a unique opportunity to renew the Federal commitment to civil rights enforcement with regard to Title VI. In higher education, the Department of Education should:

- Monitor the implementation of the desegregation plans in Arkansas, Florida, Georgia, Oklahoma, and

[1] 347 U.S. 483 (1954).
[2] *Id.* at 493.
[3] 42 U.S.C. §2000d (1970).
[4] 430 F. Supp. 119 (D.D.C. 1977). Arkansas, Florida, Georgia, North Carolina, Oklahoma, and Virginia.
[5] Adams v. Richardson, 480 F. 2d 1159, 1163 (D.C. Cir. 1973).

Virginia to ensure that established goals are being met within the required timeframes.[6]

- Determine the Title VI compliance status of the remaining States that formerly maintained *de jure* dual systems of higher education and require those States that have failed to eliminate the vestiges of racial segregation to submit desegregation plans in accordance with the strengthened desegregation criteria.[7]
- Review the adequacy of the criteria for eliminating the effects of past discrimination and for achieving a unitary system.

The Commission also believes that the criteria need to be strengthened in several areas:

- In redefining the missions of traditionally black institutions with regard to the level, range, and scope of programs and degrees offered, their missions should be expanded, to aid their growth and development.
- Providing traditionally black institutions with resources comparable to those at traditionally white institutions with similar missions will not remedy the effects of decades of deprivation and underfunding. Traditionally black institutions must be provided "catch-up" funding if their status is to improve significantly. Additional funds are necessary if black institutions are to compete adequately for programs, facilities, and faculty.
- *Eliminating unnecessary duplication* does not promise to be an effective mechanism if it involves only the realigning of traditional disciplines, such as education and business, which are readily available at other public and private institutions. Exclusive programming for traditionally black institutions must include specialized or career-oriented curricula that will strengthen these institutions and attract students without regard to race.
- Requiring that States give only "priority consideration" to placing new programs at traditionally black institutions will not help to ensure that they receive new undergraduate, graduate, and professional programs. Good faith efforts have a poor record as a mechanism for desegregation. States should be required to place specific new programs at traditionally black institutions that will enhance and expand their missions.
- The goals for the proportionate enrollment of black and white high school graduates in the State system should include separate goals for 2-year institutions and traditionally white 4-year institutions to preclude States from meeting this goal by increasing black enrollment in 2-year institutions and traditionally black institutions.
- The formula for increasing the number of black admissions at traditionally white institutions is unnecessarily restrictive. States are not required to

[6] On January 15, as this statement went to press, the Department of Education notified Florida that it had not made satisfactory progress in implementing portions of its desegregation plan, that vestiges of the dual system continued to exist, and that its higher education system in some respects had become more segregated. The Department requested that specific corrective action be taken within 45 days of the notification of noncompliance. Failure to comply will lead to the Department's initiation of enforcement proceedings. The Department also notified the States of Arkansas, Georgia, Oklahoma, and Virginia that several aspects of their plans had not been implemented and, consequently, important objectives in their desegregation plans may not be achieved. The States have been requested to submit within 45 days specific corrective actions. Taylor D. August, Regional Civil Rights Director, Region VI, Department of Education, letters to T. Michael Elliott, Director, Arkansas Department of Higher Education, and to E.T. Dunlap, Chancellor, Oklahoma State Regents for Higher Education, Dec. 3, 1980; Dewey E. Dodds, Director, Office for Civil Rights, Region III, Department of Education, letter to J. Wade Gilley, Secretary of Education, Commonwealth of Virginia, Nov. 22, 1980; Louis Bryson, Director, Post Secondary Education Division, Office for Civil Rights, Region IV, Department of Education, telephone interview, January 22, 1981.

[7] As this statement went to press, the Department of Education took action pursuant to a Dec. 17, 1980, order of the United States District Court for the District of Columbia that it issue findings of compliance or noncompliance with Title VI of the Civil Rights Act of 1964 in the higher education systems of Texas, Alabama, Delaware, South Carolina, Missouri, Kentucky, and West Virginia by Jan. 15, 1981, and in that of Ohio by Apr. 15, 1981. The Department of Education announced that Alabama, Delaware, Kentucky, Missouri, South Carolina, Texas, and West Virginia were in violation of Title VI for having failed to eliminate the vestiges of former *de jure* segregation within their public higher education systems.
The Department requested that Alabama, Delaware, Kentucky, and South Carolina submit statewide higher education desegregation plans within 60 days of the notification of noncompliance. Texas, which was also found to be in noncompliance, voluntarily had submitted a provisionally acceptable statewide desegregation plan to the Department of Education before completion of the Department's compliance review. Finding that West Virginia and Missouri had substantially eliminated the vestiges of their former *de jure* systems of public higher education in all but a few institutions—West Virginia University, the University of Missouri at Columbia, the University of Missouri at Rolla, and Southeast Missouri State University—the Department of Education indicated that it will negotiate directly with the affected universities that have been requested to submit plans of corrective action or responses indicating that corrective action has been taken within 60 days of the notification of noncompliance. The Department found that the other 13 traditionally white public institutions in West Virginia employed very few blacks on their faculties and staffs, but referred the matter to the Office of Federal Contract Compliance Programs, Department of Labor, for compliance responsibility under Executive Order 11246, which prohibits discrimination in employment by contractors and subcontractors who receive Federal funds. Adams v. Hufstedler, No. 70-3095 (D.D.C., Dec. 18, 1980), consent order; statements by Cynthia G. Brown, Assistant Secretary for Civil Rights, Department of Education, Jan. 7, 1981, and Jan. 15, 1981; Cynthia G. Brown, Assistant Secretary for Civil Rights, Department of Education, letter to Mark White, Attorney General of Texas, Jan. 15, 1981; Dewey E. Dodds, Regional Civil Rights Director, Region III, Department of Education, letters to John D. Rockefeller IV, Governor of West Virginia, and to Pierre S. Dupont IV, Governor of Delaware, Jan. 7, 1981; William H. Thomas, Regional Civil Rights Director, Region IV, Department of Education, letters to Fob James, Governor of Alabama, and to Richard W. Riley, Governor of South Carolina, Jan. 7, 1981; and to John Y. Brown, Jr., Governor of Kentucky, Jan. 15, 1981; Jesse High, Regional Civil Rights Director, Region VII, Department of Education, letter to Christopher Bond, Governor of Missouri, Jan. 15, 1981.

increase black admissions by more than 150 percent above the admissions level for the academic year preceding the year in which the plan is requested.

- In achieving the goals for black enrollment in graduate and professional schools, States should not be given credit for black students who enroll in graduate and professional programs outside the State system.
- The criteria should require specific recruitment and retention measures to help ensure the achievement of goals for increasing the enrollment, retention, and graduation of black students at all levels.
- The criteria should require specific mechanisms for recruiting black faculty and administrators, as well as specific measures for promoting black faculty already in the system.
- The criteria should require that States develop long-range plans to increase the pool of blacks with the required credentials for faculty employment. This should be done in conjunction with increasing the pool of graduate and professional students enrolled in the system.
- The criteria should include safeguards to preclude any reduction in the number or status of black faculty and administrators. Institutions that recruit new faculty should be aware of any changes that may lead to the reduction of minority faculty. A change in faculty should not cause the displacement or dismissal of minority faculty. The desegregation of faculty at the higher education level should promote increased opportunities for minority faculty and not limit opportunities as was the case in the desegregation of public elementary and secondary schools.
- Provisions for the elimination of discrimination in nonacademic areas, such as intercollegiate athletic programs, employment services, college housing, health care, and extracurricular activities should be a focus of the desegregation criteria.

The *Adams* decision is a milestone in desegregation law. It clearly establishes that it is the duty of the Federal Government to commence enforcement proceedings when its efforts to secure voluntary compliance with Title VI fail to achieve desegregation within a reasonable time. The court of appeals said:

> a request for voluntary compliance, if not followed by responsive action. . .within a reasonable time, does not relieve [HEW] of the responsibility to enforce Title VI. . .and consistent failure to do so is a dereliction of duty reviewable in the courts.[8]

The Commission strongly supports the *Adams* decision and its mandate for a unitary system of higher education in which each institution in the system will provide equal educational opportunity and be accessible to all students without regard to race.

The Commission continues to believe that desegregation of public education is the principal tool for achieving equality of educational opportunity. In 1954 Chief Justice Earl Warren said, "it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education."[9] The importance of education as a means of fulfilling the American dream has become more evident in the 26 years since *Brown*. As the Nation enters a new decade, it is appropriate to reflect on the meaning and promise of *Brown* and to make a firm commitment that the 1980s will witness the achievement of equal educational opportunity at all levels.

[8] Adams v. Califano, 430 F. Supp. 118, 119-29 (D.D.C. 1977).

[9] Brown v. Board of Education of Topeka, 347 U.S. 483, 493 (1954).

Appendix A

Traditionally Black Public Institutions

Alabama
Alabama A&M University (LG)
Alabama State University
Lawson State Community College
S.D. Bishop State Junior College

Arkansas
University of Arkansas at Pine Bluff (LG)

Delaware
Delaware State College (LG)

Florida
Florida A&M University (LG)

Georgia
Albany State College
Fort Valley State College (LG)
Savannah State College

Kentucky
Kentucky State University (LG)

Louisiana
Grambling State University
Southern University A&M College (LG)
Southern University in New Orleans
Southern University Shrevesport-Bossier (2-year)

Maryland
Bowie State College
Coppin State College
Morgan State University
University of Maryland-Eastern Shore (LG)

Mississippi
Alcorn State University (LG)
Coahoma Junior College
Jackson State University
Mississippi Valley State University
Utica Junior College

Missouri
Lincoln University* (LG)

North Carolina
Elizabeth City State University
Fayetteville State University
North Carolina A&T State University (LG)
North Carolina Central University
Winston-Salem State University

Ohio
Central State College

Oklahoma
Langston University (LG)

Pennsylvania
Cheyney State College
Lincoln University**

South Carolina
South Carolina State College (LG)

Tennessee
Tennessee State University (LG)

Texas
Prairie View A&M University (LG)
Texas Southern University

Virginia
Norfolk State University
Virginia State University (LG)

West Virginia
Bluefield State College*
West Virginia State College*

(LG) = Land-Grant College

* These are traditionally black institutions that are now predominantly white.

** Lincoln University became a State-related institution in 1972. Although it is not State-owned (as is Cheyney State College) and is governed by an independent board of trustees, it is financially dependent upon the Commonwealth of Pennsylvania.

* U. S. GOVERNMENT PRINTING OFFICE : 1991 725-995/1264